ADMINISTRATIVE IMPEDIMENTS TO TRADE UNDER THE UNITED STATES-CANADA FREE TRADE AGREEMENT

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BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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ADMINISTRATIVE IMPEDIMENTS TO TRADE UNDER THE UNITED STATES-CANADA FREE TRADE AGREEMENT

FRIDAY, JUNE 15, 1990

House of Representatives,
Committee on Small Business,
Washington, DC.

The committee met, pursuant to notice, at 9:15 a.m., in room 2359-A, Rayburn House Office Building, Hon. John J. LaFalce (chairman of the committee) presiding.

Chairman **LaFalce**. The Small Business Committee will come to order.

The United States and Canada launched the largest and most significant bilateral Free Trade Agreement in world history 18 months ago. The agreement was unprecedented in seeking not only to eliminate all tariffs between the two countries, but most nontariff barriers as well.

It is the first international agreement to set forth binding rules governing trade in services, to restrict discriminatory measures affecting private investment and Government contracting, and to initiate procedures for addressing problems involving national subsidies.

The benefits of the agreement are already apparent in both countries. U.S. merchandise exports to Canada increased 10 percent during 1989, providing U.S. exporting companies with $7 billion in additional sales. The Royal Bank of Canada credits the agreement for increased investment flow into Canada, and Prudential-Bache Securities has cited the agreement as a principal factor in making Canada's corporate sector more efficient and more competitive.

But possibly the most important benefits to date have been psychological. The Free Trade Agreement has begun the process of blurring the border between the world's two largest trading partners, encouraging businesses and consumers to base decisions on market forces rather than political frontiers. Small companies that had never considered selling their products abroad have begun to look at market opportunities in Canada, and to see the potential benefits of competing in broader international markets.

The one troubling aspect of this experience is the fact that, while the initial benefits of free trade have been significant, it appears that they could have been even greater.

Reports began appearing late last year indicating that many companies were expressing concern that lack of information about free trade policies, complex processing and certification procedures, burdensome documentation requirements, and excessive compliance costs were discouraging trade in products under the agreement.

What was intended to simplify and facilitate United States-Canada trade apparently has had the opposite affect of increasing both the complexity and cost of moving products across the border.

With a second year of tariff reductions, and acceleration of tariff reductions on more than 400 products in April, the Free Trade Agreement has begun to provide tangible financial benefits for U.S. businesses. Unfortunately, many businesses remain reluctant to market products to Canada, or choose not to apply for tariff benefits on products that are now being traded.

Our purpose this morning is to investigate the real or perceived problems that pose disincentives to trade in goods and services under the Free Trade Agreement. I am concerned that these problems, which are reported primarily by larger firms which have acted first to initiate export sales under the Free Trade Agreement, will pose far more significant impediments for the smaller companies that are just beginning to seek market opportunities in Canada.

The problems that have been reported fall generally within three broad groups. First, problems involving complaints of widespread confusion regarding free trade benefits and procedures and continuing expressions of need for more practical information and training on free trade requirements and procedures.

A second group of problems involve what are widely perceived as overly complicated and burdensome customs compliance and certification requirements, particularly those relating to rule-of-origin procedures.

The third group involves the absence of clear or consistent policy guidelines governing a variety of administrative and procedural problems that occur with increasing frequency at Canadian border crossings.

The Commerce Department reports that only 8 percent of the Nation's 4.5 million businesses engage in any form of export trade, and that nearly 80 percent of all U.S. exports are attributable to less than 2,000 companies.

These are dismal statistics for a country that prides itself on being an international power and the world's greatest trading Nation. We have a vital interest in encouraging export sales and an obligation to correct policies that frustrate export activities.

In addressing the administrative and procedural problems arising under the United States-Canada Free Trade Agreement, it is not our intent to criticize agency policies or regulatory efforts. Free trade is an unprecedented experience that requires experimentation and adjustment to address new conditions. Our interest is in initiating a process to identify and improve those policies and procedures that impede or frustrate growth in trade, travel, and exchange under the Free Trade Agreement.

I believe the ranking minority member of the committee, Congressman McDade from Pennsylvania, has an opening statement, and, at this time, I would like to have it included in the record as if read.

[Mr. McDade's opening statement may be found in the appendix.]

Chairman **LaFalce**. I am very pleased to begin today's hearing with the testimony of my colleague and neighbor from New York, Representative Louise Slaughter. Representative Slaughter has been active in the USKN, FTA, and we welcome her remarks.

TESTIMONY OF HON. LOUISE McINTOSH SLAUGHTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Ms. **Slaughter**. Thank you. I appreciate very much the opportunity to appear before you this morning.

As you point out, this is a very important agreement to our area, as well as the United States.

The agreement signed in 1988 set the stage for the creation of new trade opportunities on both sides of the border. This agreement has been particularly important to western New York because of its proximity to major Canadian markets and urban centers.

In 1988 alone, 49 percent of Rochester area exports were sent to Canada, and 30 percent of imports into the Rochester area originated from Canada. In dollar terms, this amounted to over $5.25 billion. Nationally, commerce between our two Nations exceeded $160 billion last year, which is greater than our trade with Japan.

The extent to which western New York and other regions gain from these new relations, however, will depend on how well we identify the issues facing us in implementing the agreement, and how well we resolve the problems that arise.

In recent discussions with both business and Government officials, I have noticed certain recurring themes. Most of them relate to the less glamorous dimensions of exporting, such as customs barriers, certificates of origin, and Government bureaucracies. Yet, it is precisely these types of nontariff barriers which hinder the full potential of the trade agreement.

For example, the rules of origin and the certificates of origin, which are integral elements of the United States-Canada Free Trade Agreement, pose many difficulties. The paperwork requirements are burdensome, and the interpretation of specific provisions differs between provinces and agencies.

Questions ranging from customs delays to breaches of the agreement, and unfair trade allegations raise additional problems.

I recently received a study performed by the Canadian Government, which was sent to me by Mr. George Musgrove of the Canadian Consulate in Buffalo. Some of the many observations and conclusions from this report include: A need for a uniform interpretation of regulations at various border points; consideration for a standardization of documentation; a need to communicate information on the FTA to U.S. regional offices and border points to facilitate mutual understanding of the spirit of the agreement; a need for a coordinated communication document to inform small business of new developments and policies under the FTA; a need for a single point of contact for business when in need of resolving a problem; a suggestion was made to have in Canada a U.S. office, and in the United States a Canadian office, to provide information on regulations, and to direct information requests.

It is obvious that there are real problems out there for those businesses, particularly small businesses.

Currently, the Department of Commerce is involved, the Treasury Department, the USDA, the USTR, the SBA, as well as the State Department. Within these agencies, there are also the various offices and bureaus which interact with businesses, such as the Customs Service, the Foreign and Commercial Service, the ITA, the FDA, the Office of Canada, the OIT of SBA, SBDS's, and various district offices of DOC and SBA.

The question remains, though, when a small business has a problem, whom should they contact?

The points made here today, and the issues which many of today's panelists will be raising, highlight the need for a coordination of current activity. We must not allow administrative difficulties to diminish the inherent worth of the FTA. To prevent the establishment of new barriers in place of those we have just eliminated, the United States and Canadian Governments must take steps to resolve these institutional problems. The most meaningful step we could take right now would be to designate a free trade ombudsman to help implement the United States-Canada agreement.

The ombudsman proposal is based on this need for coordination, and would oversee the trade activities of various Federal and provincial government agencies. It would also resolve technical disputes concerning the implementation of the Free Trade Agreement.

Most importantly, this ombudsman would provide a single point of contact for businesses with questions or complaints relating to the agreement, and also act as a liaison between businesses and the United States and Canadian Governments.

A single office, such as an expanded version of "the Secretariat," created in the implementing legislation of the FTA, which would have a counterpart in the Canadian Government, could fill all these needs. Designated field representatives located in border States and provinces would be helpful as well.

The important elements of such an ombudsman would be the contact between the respective United States and Canadian offices, the intragovernmental contacts, and the ability to resolve minor disputes.

There is no need to create another bureaucracy to deal with administrative and technical trade disputes.

The ombudsman is premised on coordinating these efforts, not duplicating them.

An ombudsman mechanism would be useful to businessmen and women, and would meet a critical need of business.

I have recently sent a letter to U.S. Trade Representative Carla Hills urging consideration of the ombudsman proposal as an answer to the problems raised here today. The letter was cosigned by colleagues who served with me as members of the Canada-United States Interparliamentary Group meeting earlier this year, including the chairman of this committee, Mr. LaFalce, as well as Mr. Gibbons, Mr. Fascell, Mr. Gejdenson, Mr. Upton, and Mr. Oberstar. I will submit a copy of the letter for the record.

Generally speaking, we all may have our own ideas on how to structure such an ombudsman, but the specifics on how we construct the office are not as important as the function it serves. A need exists, and this is a proposed solution.

[Ms. Slaughter's statement, with attachments, may be found in the appendix.]

Chairman LaFalce. Thank you very much for an excellent statement.

To the extent your time permits, I would love it if you could join us to listen to the other witnesses.

Ms. Slaughter. I do have a couple other appointments, but I would like to stay here awhile, and my staff person will be here.

Chairman LaFalce. Thank you very much.

Our panel of witnesses now will be Mr. John Simpson, Deputy Assistant Secretary of Treasury for Regulatory Tariff and Trade Enforcement, Steven Jacobs, Deputy Director, Office of Canada, International Trade Administration, U.S. Department of Commerce, Saul Sherman, Esquire, chairman, Committee on the United States-Canada Free Trade, American Association of Exporters and Importers, Andrew Vanderwal, vice president, Canadian Importers Association, Inc., Eugene A. Hemley, executive director, NCITD, The International Trade Facilitation Council, and Michael Hachee, Customs Broker, C.J. Tower, Inc., National Customs Brokers and Forwarders Association, Customs Brokers Association, Northern U.S. Border.

Gentlemen, it is now 9:30, and we have six of you. If we gave each of you no more than 10 minutes, that would permit time for questions by the committee.

I have a time constraint. I must leave by 11:00 o'clock. So I am going to ask each of you to attempt to confine your remarks to no more than 10 minutes.

We will put the entirety of your statements into the record at this time, and we call upon you to read them or summarize them in that 10-minute period.

Sometimes, I find that reading them is shorter than what is supposed to be a summary.

With that, let me call upon our first witness from the Treasury Department, Mr. John Simpson.

TESTIMONY OF JOHN P. SIMPSON, DEPUTY ASSISTANT SECRETARY OF TREASURY, REGULATORY, TARIFF, AND TRADE ENFORCEMENT

Mr. Simpson. Thank you, Mr. Chairman.

I can be very brief. When we appeared here a few months ago, we told you that, on the basis of very limited experience, we were guardedly optimistic about the facility with which the Free Trade Agreement administration was getting underway. Several months later, I can tell you that our impression has not changed.

We are aware that there are problems. There are problems with the structure of the agreement itself, and in the sense that the——

Chairman LaFalce. You are sure you are not incurably Panglossian? I really like that.

Mr. Simpson. I write my own statements. There are some flaws with the agreement in the sense that in some places it is not as clear as it could be, and there are some flaws in the sense that some sectors of the industry did not get the benefits that they now think they should have attempted to get.

We are also aware that there is a need for us to work closely with the Canadian Government to harmonize regulations and documentation, and to coordinate our rules and procedures.

I must say that effort is going very well. It has been a pleasure to work with the Canadian Government.

The third thing we are trying to do is to make importers in this country and exporters in this country aware of the requirements for obtaining preference under the Free Trade Agreement.

This is the first experience the United States has had—I shouldn't say the first experience, but the first significant experience that the United States has had in being a recipient of trade preferences.

We have been more accustomed to extending preferential trade to developing countries, and we now find ourselves on the receiving end, so, there is a learning curve that has to be climbed by U.S. exporters because in international trade there are some procedural requirements, especially under preferential arrangements, that have to be observed.

But we are very satisfied with the cooperation we are getting from the Canadian Government, and we are also very optimistic about the ability of U.S. businesses to adapt to an international trading environment.

Thank you, Mr. Chairman.

[Mr. Simpson's statement may be found in the appendix.]

Chairman LaFalce. Thank you.

At the conclusion of your statement, you say, at the risk of exposing yourself to some tough questioning, you shall simply reiterate that the Department is pleased with our experience with trade in goods under the agreement. We will get to that question later, Mr. Simpson.

Mr. Jacobs.

TESTIMONY OF STEVEN P. JACOBS, DEPUTY DIRECTOR, OFFICE OF CANADA, U.S. DEPARTMENT OF COMMERCE

Mr. Jacobs. Thank you.

My statement is long, but it will be shorter to summarize.

What I would like to do this morning is briefly give you an overview of the Commerce Department programs to take advantage of the FTA and to make the provisions of the FTA known to the American businessmen.

Chairman LaFalce. You are the Deputy Director of the office. Who is the Director, again?

Mr. Jacobs. Bill Cavitt.

Chairman LaFalce. How long have you been Deputy Director?

Mr. Jacobs. About 3 years, sir.

Our activities primarily are in three forms, to inform the American business community of the provisions of the FTA, to solve exporters' problems, and to insure compliance with the agreement in the United States, as well as in Canada.

Our major efforts have been to adopt a Canada First Outreach Program with four objectives. First, to educate and energize American firms; to inform small- and medium-sized businesses, particularly new to export firms, why Canada is the ideal first foreign market for them to try.

Also, to build new exporter confidence from their experience in Canada to try other, more difficult markets and to work with States, trade associations, and others to develop implementation plans for their constituents.

The idea behind the Canada First Program is that we believe that once an exporter has experienced exporting to Canada, this experience is translatable to more difficult foreign markets.

We have begun an intensive seminar program, called the Canada First Border Seminar, to take the mystery out of exporting for new-to-export and small businesses.

In these seminars, participants will receive basic information on how to export, visit a Canadian city for briefings on selling to Canada, tour Canada Customs, and receive hands-on briefings about border crossing procedures. We are starting this program this month with seminars for the furniture industry, and for firms in Ohio, and then continuing with programs monthly thereafter.

We have one specifically in the Pacific Northwest in October. We think that our discussions with State trade agencies in New York, Illinois, Kansas, and other States will add additional programs.

Chairman LaFalce. We have had a number in western New York sponsored by the FTA, but in cooperation with Commerce. We had one in Niagara Falls and had 2,000 small businesses attend.

We are having one October 23 and 24 in Buffalo, and it is our expectation that we will have a minimum of 4,000 participants.

Mr. Jacobs. Our idea behind the border seminars is to keep them relatively small, to give individual exporters the hands-on procedures of getting the goods across the border to take the mystery out of this process.

We hope that will work.

Last year, as you mentioned, Mr. Chairman, we put on, my office alone, 50 Customs procedures seminars focusing on the documentation procedures required with about 7,000 participants. We sponsored about 100 other programs about exporting to Canada as well.

My office answered over 20,000 phone calls and letters on the FTA and its requirements, and we give them the full information from tariff rates and HS numbers, to trade shows, trade data, and the like.

But the most common questions that we got last year did concern the certificate of origin. So, with the U.S. Customs Service, and my colleagues over there, and the Canadian Customs Service, we published the "Guide to Exporting Procedures," which I brought with me today for your review, as well as several other publications.

These are only a few that the Commerce Department's Office of Canada has put out to help take advantage of the FTA.

The other central element of our job is to help exporters solve their problems. Secretary Banker's statement yesterday about the phone calls to the White House resulted in 8,000 phone calls. We handled 20,000 last year, and can handle more than that.

That is part of our problem, getting that kind of information out to the public. I think you all can be helpful in doing that.

One other area that is particularly important to us is Government procurement, where in the FTA we have provided access to an additional $500 million in contracts for American small businesses who, in particular, usually wind up bidding on these sorts of contracts.

Whereas the majority of Canadian procurement was inaccessible in the past, in the first 5 months of this year alone, 61 companies have been awarded contracts from $9,000 to over $1 million.

Besides the Office of Canada, the U.S. Foreign and Commercial Service is heavily involved in promoting trade with Canada. We have 68 offices throughout the United States, eight officers in Canada, along with 12 nationals. They are all helping U.S. businesses export.

They have been reporting, on average, 65 tender notices each month for Canadian Government procurement, which we have been reporting throughout Commerce Department mechanisms here in the United States. Our district offices have also promoted, participated, and put on numerous seminars throughout the country, as you mentioned, Mr. Chairman.

We had at one focusing specifically on the documentation requirements alone; I think it was in Hartford.

So, while this is just a quick review of the Commerce Department activities, I think that you can get an idea of what we are trying to do to get the word out to the business community. We are trying to focus our efforts on small business and new-to-export firms because that is where the greatest potential lies.

I would encourage you to continue your efforts to help us get the word out about our programs and the services which we can offer.

That concludes my statement.

[Mr. Jacobs' statement may be found in the appendix.]

Chairman **LaFalce**. Thank you very much. We have heard now from the Government witnesses, and we will now hear from four individuals who represent the business community and have been having difficulties. I think part of the benefit of this hearing will be to have the representatives of the U.S. Government directly involved sit and listen directly to the comments that the business community has to make, and then we can engage in some type of dialogue afterward.

As I said, our next speaker is Mr. Sherman, representing the American Association of Exporters and Importers.

TESTIMONY OF SAUL SHERMAN, ESQ., CHAIRMAN, SUBCOMMITTEE ON UNITED STATES-CANADA TRADE, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

Mr. **Sherman**. Thank you. Mr. Chairman, Congresswoman Slaughter, we are a group of 1,100-odd companies and service people in the international trade field, importers and exporters, large and small, and pretty much a cross section of American business.

We appreciate the opportunity to be here. I will summarize very briefly our comments in our written statement.

First and foremost, I want you to know that we have been proponents of the FTA from the outset, and we think that basically it is running smoothly and well.

We are optimistic, also, about it. But the compliance is bewildering, especially to anybody who is new to it, and small, and does not have the resources to cope. To some extent, that is inherent in the problem. All of this derives from the need to establish that the goods do come either from the United States, or Canada, or some combination of the two and to isolate the extent to which there are other sources of the goods involved.

That gets to be in the modern world a very complicated question. Some of it has to do just with the facts of life.

If somebody gave the classic example of selling a used car, try and prove where each part of that car came from years ago when somebody else bought it from some third party manufacturer that you have no contact with. It is practically impossible. We have problems like that here.

But even in the situation where people are involved in production, it can be very difficult. The problem is under two headings really.

That is the form itself and the information that is requested, and the other is the rules themselves that are embedded in the agreement.

Let me start with the form. We have gone into two particular complaints about it that our members have come up with. The first pertains to unnecessary information, as we see it, that is requested concerning the destination of the goods throughout the consignees or the purchaser/importer of record.

The object of the exercise is to determine where the goods are coming from, and where they were manufactured and where they are heading seems superfluous. They are in agreement with us and have raised the same objection.

I am sure there are situations where it could be helpful.

Chairman LaFalce. Let me interrupt you. What do you think of Mr. Sherman's comments on that, Mr. Simpson?

Mr. Simpson. My impression is that we have discussed that with the Canadian Government, and I thought we had made a change fairly recently to solve that problem. That is the so-called block three problem.

We are very responsive. My impression is that is a problem that should go away.

Chairman LaFalce. What is the block three?

Mr. Sherman. That is where the question arises.

Chairman LaFalce. Have they come up with what you think is going to be a solution to the problem, Mr. Sherman?

Mr. Sherman. Well, I am not sure what John is referring to, but I am sure if he says it is being taken care of, and he is familiar with, that would be the test.

Chairman LaFalce. Can you tell me how it is being taken care of?

Mr. Simpson. We can provide an explanation for the record.

Chairman LaFalce. How about trying it verbally now?

Mr. SIMPSON. Mr. Chairman, this was brought up in a meeting with the Canadians at the end of April. I will confess to you that I don't remember exactly how we got at this.

Chairman LAFALCE. We will come back to that. Please continue, Mr. Sherman.

Mr. SHERMAN. We had one other specific objection and that was to the provision in block four requiring information in detail about the identity of the producer which normally, the manufacturer of the goods, which in most cases is not a problem and is quite germane but in certain situations where the source of our product is a trade secret, and somebody could, a middleman could be cut out of the business if he disclosed his sources, provision needs to be made to hold that back.

Now, we understand that on that one the Canadian Government has made provision for preserving the confidence, but our information is that the United States had not, and it is also probably in the works at some level or another.

Chairman LAFALCE. Does the U.S. Government care to comment?

Mr. SIMPSON. I am one question behind. Let me answer about block three.

We have now agreed with the Canadian Government that we will issue a clarification to our rules that allow either the purchaser or the importer of record to be entered into block three in lieu of consignee. That should take care of the problem to a great extent.

Chairman LAFALCE. Well, I will ask members of the panel to remember that point and will seek your comment as to whether that does or does not take care of it when we conclude the testimony.

Mr. SHERMAN. The next point was about the identity of the producer being in some cases confidential, or else there are situations described in our paper that involve so many thousands of tiny parts, for example, that the repetition is unduly burdensome. What we are asking for is some kind of an arrangement whereby the information can be filed all at once on a continuing basis with the Government, and simply a cross reference to the filing be made as each shipment comes in across the border.

Mr. SIMPSON. Shall I respond to that?

Chairman LAFALCE. If you like.

Mr. SIMPSON. We must have the identity of the producer. The producer is the only person who really knows whether United States or Canadian components were used in the manufacture of the product. There is just simply no way to avoid getting the identity of the producer.

With respect to the repetitive certification of the origin of goods or the origin of parts when there are hundreds of them, we do allow for blanket certification.

We extended the coverage of that certification from 6 months to 12 months.

So, I think we have made every effort to allow blanket certifications to be used. The Canadian Government has done the same.

Mr. SHERMAN. If I may. Two things on that.

First of all, as to the identity of the producer, it is not a question of not disclosing it to anybody but not disclosing it to the customer.

What we were asking for was the privilege of filing it with the exporter government rather than disclosing it down the line, across the border to the people who the product is going to. So, John is correct that the Government needs to know who the producer is.

Chairman LaFalce. You were shaking your head, Mr. Simpson.

Mr. Simpson. Well, Mr. Chairman, we have recourse against the importer of record in the United States. He is the guy who assures us that the legal conditions for obtaining tariff preference have been met. In order to do that, he needs the certification from the producer of the goods, not from the middleman, but someone who knows how the goods are actually made.

There is a legal chain of responsibility here. Someone has to be accountable for lying to the Government, if that happens. We can't let the importer posture himself in a position where he can say, gee, I am going to claim tariff preference, but I have no assurance from anyone in a position to know that I qualify. In a Free Trade Agreement that involves the volume of trade that we have with Canada, I don't think it would work.

Chairman LaFalce. Let me admonish you, Mr. Sherman. You are taking more than 10 minutes.

[Laughter.]

Mr. Sherman. It is my ventriloquist act.

Chairman LaFalce. But since I may be responsible, we will give you more time.

Mr. Sherman. I defy anybody who has not spent months studying the rules of origin to look at the rules and know how to proceed and just what they mean as to a given product.

We are in the presence of the author, most of them, and I know what he went through, Mr. Simpson, in negotiating it with a great deal of input from the private sector and any number of attempts to accommodate.

It is a very intractable problem and despite everybody's best efforts, it has been very well resolved. There is an effort going on currently in the GATT Uruguay Round to cope with this problem that recurs in many situations of determining where goods come from for tariff purposes.

If they come up with a cleaner, neater, simpler solution, it would be our hope that that or any other improvement that people come up with in another context, would be adopted here by way of some kind of—it would take an amendment of the treaty and Canadian concurrence, I am sure.

But I would hope that they would have the same problem and the same interest.

We have, in the meantime, as long as the present rules exist, a particular proposal, which I won't spell out here, as to a particular problem area where we would hope that we could simplify the determination that something has been substantially transformed.

Turning to the general question of enforcement, we have these problems that have been mentioned, particularly by Congresswoman Slaughter. We are firmly in support of her idea of having a hot line or ombudsman, what have you.

There was one we believe earlier on, and some of it has been eliminated by virtue of budgetary constraints, and a new ombudsman for general purposes, not particularly focused on the Canadian agreement, has just been established at Customs.

We are hopeful that one way or another, some such central point of contact to lead small businessmen, particularly through the maze by the hand, will be established.

We also find that in Canada, particularly, a lot of implementation has been vague. The lack of guidelines was mentioned, and differences between ports.

Chairman **LaFalce**. There is a special Canadian free trade branch within Customs, correct?

Mr. **Simpson**. Yes, sir; that is correct.

Mr. **Sherman**. Yes.

Chairman **LaFalce**. They used to have a hot line there?

Mr. **Simpson**. I think we had a hot line for about the first year, but at this point we find that most importers are able to get their problems resolved at the Customs local level because the level of expertise at the Customs local level is now adequate to answer most questions.

Mr. **Sherman**. What I haven't said that is especially important is that the sum total of all of these problems is such that we find many people in their organization saying that they have simply foregone the benefits of the agreement because compliance is so burdensome.

Chairman **LaFalce**. Have they tried and, therefore, know they are burdensome and have given up, or have they just not tried?

Mr. **Sherman**. Well, if you have this used car example, I don't know how you would try to find out where the carburetor came from. As soon as you find out that you have to know where the carburetor came from, you throw up your hands.

So, it is hard to say exactly what stage this happened. But, as the benefits go up, people have been finding that one way or another they have to comply and they do.

I can't certify to you the quality of the compliance, and that may become a very serious problem some day. But people are filing something and it seems to be working gradually. They find a way.

But it is really putting a considerable price on getting the benefits of the agreement at the least..

One thing that is off this track, but the present proposal on user fees, amendment of the user fee arrangement, which is sort of a second cousin of tariffs, is such that because it has a high minimum charge, it is likely as tariffs fall and because of the relatively small volume in which individual shipments go by truck usually, typically to Canada or by train, it is likely to have a disproportionate, adverse effect if the minimum user fee is not reduced substantially.

The present proposal would raise that minimum well above the present level, and it would especially hit small exporters and importers.

[Mr. Sherman's statement may be found in the appendix.]

Chairman **LaFalce**. All right, Mr. Sherman, thank you very much for your very fine testimony.

Let us now hear from Mr. Vanderwal, representing the Canadian Importers Association.

TESTIMONY OF ANDREW VANDERWAL, VICE PRESIDENT, CANADIAN IMPORTERS ASSOCIATION, INC.

Mr. VANDERWAL. Thank you. Good morning, Mr. Chairman, and Congresswoman Slaughter.

I would like to convey the appreciation of the Canadian Importers Association for this opportunity to appear before the committee during these hearings. The Canadian Importers Association has been active in representing and advising its members throughout the process of the development and implementation of the Free Trade Agreement and is continuing to concentrate on areas of improvement that are needed with the agreement as we see it evolve further.

By way of background, our principal role has been to represent members before Government and private sector organizations relating to Canada's import trade.

In addition to representation, we provide our members with information services so that they can properly structure their business. From the perspective of our association, it would appear that the administrative impediments to trade under the Free Trade Agreement ultimately relate to the agreement itself more than the administration of the agreement, per se.

I am not saying that there are no problems with the administration of the agreement, and I have tried to identify some of these in the written testimony, but it is my understanding that these hearings are focusing specifically on problems relating to the administration of the agreement and not necessarily with merits of certain aspects of the agreement itself.

Chairman LAFALCE. That is correct. On the other hand, we are not going to refuse comments on the substance of the agreement. So, please feel free to comment.

Mr. VANDERWAL. I would like to venture over that threshold occasionally in my comments.

As has already been discussed, the Free Trade Agreement specifies the criteria under which a product may qualify for this preferential treatment. These rules of origin have been put in place as Canada and the United States have chosen to structure their trade agreement following a free trade agreement format rather than a Customs/union-type format that is followed by European countries and their trade agreement.

Of course, the Free Trade Agreement enables both the United States and Canada to maintain its own external barriers quite separately to third country imports.

In adhering to these requirements of the rules of origin, which are very necessary under a free trade agreement, we find the greatest impediment to utilizing the agreement. We have received comments from importing companies to the effect that since the agreement is still in the early years of implementation, the benefits in some occasions are not high enough to compensate for some of the costs to claiming the tariff. That is changing rather quickly with the accelerated implementation of some of the duty reductions that were negotiated last year and will continue to be negotiated each year. As a result, we are finding that the benefits are rising more quickly than was originally set out in the agreement.

One of the requirements of the Free Trade Agreement that our members have indicated is among the most onerous is the value-added provisions. A lot of products not only need to qualify by having a specific change in tariff transformation, but also they need to substantiate a value-added requirement.

We have heard that in some cases, products can be disqualified for Free Trade Agreement application due to a small value offshore component that may account for less than 1 percent of the value of the final product.

This is because of the actual tariff classification, requirement can be prevented by relatively small value components.

So, again, to reiterate, most of the recommendations for administrative improvements in the written submission would actually involve changes to the Free Trade Agreement itself, in our view. There are some minor areas where association members have identified where they feel improvements can be made to the administration of the certificate of origin, the document itself.

I have identified them in my submission. But they are rather minor in comparison to problems relating to the agreement, rules of origin in general.

The magnitude of the problems encountered certainly are partly a result of the high volume of trade covered by the agreement. Canada is marginally the largest trading partner of the United States and the United States is by far the largest trading partner of Canada.

A great deal of trade is covered by the Free Trade Agreement. We see the agreement as being a milestone in the whole process of trade liberalization between our two countries. There has been significant liberalization of trade before, and there will continue to be further liberalization in negotiations in the years ahead, and we would hope that an important area for future negotiations will entail simplification or perhaps even eventual elimination of Free Trade Agreement rules of origin criteria.

I have also included in my submission some discussion of nontariff barriers relating to standards, and I use the example of our trade in meat where we find that there have been some very high and necessary costs relating to cross border inspection. One of the groups of importers that we represent are meat importers, principally because of the very difficult and costly inspection procedures in trading meat between our two countries.

Largely, as a result of the Free Trade Agreement, we are finding that our respective governmental organizations have reached a point where they are very close to an open border for meat products, which will very substantially reduce the costs of trade in that sector.

This is but one example of where standards and administrative barriers can be coming down in areas quite unrelated to the certificate of origin.

I think I am probably reaching quite close to my time limits here, so, I will just leave the rest for discussion.

[Mr. Vanderwal's statement may be found in the appendix.]

Chairman LaFalce. Thank you very much, Mr. Vanderwal, for your fine testimony.

Our next witness will be Mr. Eugene Hemley of the International Trade Facilitation Council.

TESTIMONY OF EUGENE A. HEMLEY, EXECUTIVE DIRECTOR, NCITD—THE INTERNATIONAL TRADE FACILITATION COUNCIL, ACCOMPANIED BY IDA WATSON, HERCULES CO., AND THOMAS FATCHERIC, EASTMAN KODAK

Mr. **Hemley**. Thank you, Mr. Chairman.

I represent the Council, also known as NCITD, which is related to its previous name.

I thank the House Committee on Small Business for the opportunity to make a statement regarding trade under the United States-Canada Free Trade Agreement. I would like to invite your attention that I brought with me two practitioners who could answer many questions, Ida Watson of Hercules Co., and Thomas Fatcheric from Eastman Kodak Co..

Our organization is a nonprofit, industry-financed organization. It has been in operation for 23 years.

We are a nonlobbying organization, a nonadversarial organization, and we work with Government to facilitate trade.

Chairman **LaFalce**. It sounds like you have mostly big business.

Mr. **Hemley**. Yes; I would say that we have 200 organizational members involved with international trade, of which we have a goodly number of big business companies. However, in our conferences, forums, and seminars, we do attract small businesses to come to them.

We just had a 3-day conference. But you are correct that we are generally composed of major operators.

We actually have, though, more than just exporters and importers. We have air and ocean carriers, banks, insurance underwriters, forwarders, custom brokers, associations, port authorities, communications, computer software, service companies, and others who participate in international trade.

So, when we have our meetings, which involve about 10 or 15 committees, we actually have Government people there. For example, in our carrier meetings, we have as many as 10 Customs people present. Much of our work is done at the working level and often does not require the writing of a letter to correct problem areas.

Earlier this year, the Department of Commerce put a pamphlet out on the Free Trade Agreement. It was there where they said that the Free Trade Agreement with Canada was working very well. Our members rose up in arms at this, and so rather than just complain, we wrote to the Department of Commerce and suggested that we have a meeting to discuss this, because there were, as Congresswoman Slaughter said, 10 or 15 Government agencies you were dealing with that were listed.

We wanted to bring all listed to one place to discuss this matter. I am happy to say that we received a very rapid response from Deputy Assistant Secretary Simpson, and we had a meeting on March 20, 1990, with representatives of the U.S. Treasury Department, Customs, the Department of Commerce, plus our business people there.

Therefore, we had a working relationship that has been established now, we feel, with Government. We understood from Mr. Simpson that in the meetings with the Canadian representatives that many of our problems would be brought up and that we would have another meeting with U.S. Departments involved in about 6 months time.

So, we feel we have an ongoing active relationship.

Let me mention some of the issues identified, though. The rules of origin. The effort to acquire information and document country of origin under the current rules is a growing administrative burden for companies. This is especially true for products consisting of large numbers of components of both U.S. and foreign origin.

The current rules of the Free Trade Agreement require detailed information on all components or materials as to the Harmonized tariff classification and country of origin.

The administrative effort to require this information and maintain it should be simplified. The requirement for U.S. origin certification are unclear regarding suppliers and levels in the supply chain, intermediate materials and use of domestic and foreign suppliers for the same raw material or component.

Domestic suppliers are unfamiliar with Harmonized codes and certificates of origin and in many situations have difficulties in providing product information in the detail necessary to satisfy origin requirements.

The next item was identifying each ingredient or component causes a problem where there is confidential information related to the product.

Next, the procedure to determine origin is difficult when using both domestic and foreign suppliers for the same raw materials.

The next item is administrative.

Revenue Canada has introduced a territorial questionnaire, five pages of instructions and seven pages of forms, which represent a growing administrative burden to complete and which frequently requires extraneous information to satisfy a relatively simple verification of territorial content.

One of the specific areas where U.S. exporters have encountered problems has been with the documentation of origin by vendors and suppliers. At the March 20 meeting we had with the Government, we were told that exporters can obtain a statement from each supplier indicating that components or material meet the rules of origin.

They said that this statement would not have to be a formal certificate of origin, but could be a letter of assurance.

The supplier would not be required to indicate which rule applies or to provide confidential information. The affirmation of origin would only be required from the exporting manufacturer's first line of suppliers. The statement would be valid indefinitely, unless they would make any changes that would alter its validity.

That sounded good. We hope that will be documented in a written statement that we can refer to.

The next thing is on the Harmonize system rulings. First of all, I would like to direct your attention to this book. "The Harmonized Commodity Description and Coding System" is a small version of the harmonized commodity descriptions.

It was put out by the Customs Program Cooperation Council, and I recommend it to the committee to look at.

The reason I bring it up is that if I handed this book around here, and asked people to identify some product, and they studied it, we would get at least five different numbers. In other words, they would not be contrary about it, concerning the interpretation of material or interpretation of usage, the difference would be just a matter of interpretation.

So, the area that we have had most complaints about have been with chemicals and plastics. Problems have developed with completion of certificates of origin concerning the correct harmonized system numbers to use and the need to include numbers on documents.

Current interpretation indicates that the Free Trade Agreement cannot be used when the harmonized system number used by the importer is not the same as the number used by the exporter. The requirement to use harmonized system numbers in the Customs clearance function and in origin certificates causes severe problems in those cases where different numbers are applied.

It has been reported by the Customs Services of both Nations that such conflicts rarely occur. This statement is at variance with our members' experiences.

Customs authorities advise that harmonized system conflicts should be resolved through the Free Trade Agreement Commission, but we believe this to be bureaucratic and slow.

Another item we would like to mention is a de minimus rule that would allow a product to qualify as wholly a product of the United States, although it contains some small percentage of nonqualifying material.

This would help reduce the origin documentation burden. In other words, if you had something that contains 2-percent foreign components, you could establish it as wholly a product of the U.S.A.

One exporter had problems of documenting the origin of paper pads which were otherwise eligible for 100-percent origin treatment because they were unable to determine the origin of the dye used to color the U.S.-produced paper.

AS to the question of blanket certificates of origin, there was a difference between the United States and Canada. We have been notified that the 1-year common application has been implemented by U.S. Customs effective June 1.

Now, we did also submit a case study which is very interesting. Without going through it in great detail, the numbers that are mentioned are so small—$117 for total impact on annual duty revenue for Canada in 1989. The exporter determined that because of the amount of detail to substantiate his claim, as one of the previous people have said, it was hardly worth the bother.

One example was a filter element that had a 1989 duty into Canada of $3.20.

Upon submission, with the required questionnaire filled out, Revenue Canada stated that "further verification of the origin was requested. Such verification should include confirmation of origin by the supplier and a description of the component materials and processing."

The exporter spent a considerable amount of time trying to document the answers to the questions.

The second product was a lens cleaner with a total 1989 duty of $61.60, which was also included in the Territorial Content Questionnaire. Verification of origin of the lens cleaner material was required to "include confirmation by the supplier of the material, and a description of component materials and processing description."

A third example was gray screen paper with annual duty of $52.39. The exporter was able to show 78 percent U.S.A. content, but that was not enough. Revenue Canada requested additional information concerning this product and a revised filing with additional information was made.

Obviously, there are problems. I mentioned what kinds of problems there are, and we are of the opinion that these can be solved. We should check the costs involved and volume of the work necessary before requiring those types of routines.

We have an example of effort for one item included in an FTA audit which is quite educational. The story starts on January 16, 1990, and, as you go through the three pages describing the action, as of June 11, 1990, a decision is still pending.

On the question of the Harmonized Code, I think that there are solutions readily available. First of all, I think in looking at the realities of the situation, that instead of insisting that the importer and the exporter have the same number, that we accept the logical differences that can occur, or we do not require this number to be on the certificate of origin.

The March 20 meeting was very constructive and indicated a willingness by Government representatives to further research areas of contention for possible changes to U.S. Government implementation rules or representation to Canada to consider modification of Canadian rules.

We will keep U.S. Government representatives present continuously informed. We were told at that meeting that there would be one person at Customs we could deal with, Mr. O'Donnell at Customs. This was a significant move forward in having one central source for information.

We understood that there was a meeting between U.S. Customs and Revenue Canada on May 31, 1990. We had our conference in progress then.

The results of the U.S. Customs/Revenue Canada are not yet known. We are interested in knowing how many of these areas were discussed and how many were resolved.

In closing, it should be reiterated that NCITD and its membership support the United States-Canada Free Trade Agreement and would like to continue working with all parties involved in making the required procedures significant, simplified, and effective.

Thank you, Mr. Chairman.

[Mr. Hemley's statement may be found in the appendix.]

Chairman LAFALCE. Thank you very much, Mr. Hemley. We look forward to working with your organization closely in the future to accomplish all these goals.

Our last witness will be Mr. Michael Hachee, representing the Customs Brokers Association of the Northern U.S. Border, and the

National Customs Brokers and Forwarders Association. He also is an officer of the C.J. Tower Co., with headquarters in Buffalo, New York.

TESTIMONY OF MICHAEL HACHEE, OFFICER, C.J. TOWER CO., REPRESENTING CUSTOMS BROKERS ASSOCIATION, NORTHERN U.S. BORDER

Mr. **Hachee**. Good morning, Mr. Chairman.

The Customs Brokers Association of the Northern U.S. Border appreciates the opportunity to submit their views today.

Our association is comprised of 39 independent customs brokers providing brokerage service on the border with Canada. Our members prepare the Customs entries for more than 95 percent of all the goods imported into the United States from Canada.

Therefore, the Free Trade Agreement has had a significant impact on our membership.

To summarize our written statement, our comments are directed mainly at the exporter's certificate of origin in three areas that we perceive to be needlessly burdensome.

A little background on the certificate is helpful. Importers and exporters who wish to take advantage of the provisions of the Free Trade Agreement cannot do so without an exporter's certificate of origin.

The certificate is a document whereby the exporter certifies that the goods meet the rules of origin established by the Free Trade Agreement.

The importer or his agent must be in possession of the certificate prior to filing a Customs entry claiming the reduced Free Trade Agreement duty rates. The exporter's certificate of origin is not required to be submitted to Customs.

An exporter may prepare a certificate to cover an individual shipment to the other country or alternatively a blanket certificate good for a term of up to 1 year. We have attached a copy of the U.S. Customs Service certificate.

We see three areas in the form that could have immediate benefits to business if changes were made. The primary area is field three, previously mentioned here several times. Currently, the complete name and address of the buyer or importer of record must be shown in field three. This requirement is the source of most of the complaints we hear relative to burdensome documentation.

An exporter with numerous customers in the other country that wishes to execute a 1-year blanket certificate faces a formidable task. Such an exporter must either execute a separate blanket certificate for each customer in the other country or attach a listing of all its customers.

They are reluctant to produce and distribute a list of all their customers. Even when they do so, such lists, and the blanket certificate they are part of, soon become outdated as new customers are obtained or listed customers change their names and/or addresses.

Our association believes that the requirement for this information should be eliminated. In most cases, the goods covered by the certificate meet the rules of origin regardless of the identity of the buyer in the other country. An exporter should be allowed to issue a blanket certificate which is truly a blanket certificate.

Exporters should be allowed to leave field three blank, unless it is their intention to restrict the applicability of the certificate to one or more buyers.

In the latter case, the buyers would then be identified in field three. Alternatively, exporters should be able to issue a blanket certificate bearing the words "all buyers," or words to that effect in field three.

Field four is another problem also mentioned in earlier remarks. Field four requires that an exporter who is not the producer of the goods being certified to identify by name and address the actual producer. Remembering that the exporter must supply the certificate to the importer in the other country, it is easy to understand why there can be a problem.

Exporters who don't produce the goods are being forced to inform their customer of where the customer may obtain such goods in the future, likely at a lower cost.

Canada recognizes the problem and allows U.S. exporters to insert in field four a statement that the information will be supplied to Canada Customs upon their request. In this manner, a solution satisfactory to the concerns of both Canada Customs and U.S. exporters was reached.

However, as of this date, the U.S. Customs Service has not agreed to allow Canadian exporters to do the same. Our association believes that Canadian exporters——

Chairman **LaFalce**. Mr. Hachee, didn't Mr. Simpson say there would be an agreement to deal with this problem?

Mr. **Simpson**. Mr. Hachee is asking for additional changes to field 3, and we are willing to consider that, and the change in field four. I am not sure why we need that information, but it sounds to me as if we could get that information without requiring it to be disclosed on the exporter's certificate, and if we can, we are happy to do it that way.

We are just as clever as Canadian Customs.

Mr. **Hachee**. That would certainly be an improvement in the documentation burden.

Chairman **LaFalce**. We will declare the hearing successful, at least in part.

Mr. **Hachee**. A third aspect of the certificate, which would be an improvement, is to eliminate the requirement that the exporters show the six digit harmonized system classification in field eight for each of the products being certified.

We say this because the purpose of the certificate of origin is to certify that the goods qualify for free trade benefits. An exporter may have had to consider the harmonized classification in arriving at a conclusion that the goods do qualify, but once having reached that conclusion, showing the classification number on the ECO, we think, is superfluous.

In conclusion, we appreciate the opportunity to make comments. We believe these areas can hold great benefits for exporters and importers.

Thank you.

[Mr. Hachee's statement may be found in the appendix.]

Chairman **LaFalce**. We thank you very much for your fine testimony, also.

Mr. Simpson, are you personally familiar with the problem I had in my congressional district 1 week ago involving the Fantasy Island Amusement Park?

Mr. **Simpson**. I know a little bit about that, Mr. Chairman.

Chairman **LaFalce**. Let me discuss it with you, because this is fairly representative of some of the down-to-earth problems Customs must address on a daily basis, and it is the type of problem that comes into my office, I don't want to say "daily," but too frequently.

Fortunately, we have an outstanding Customs Office in Buffalo, and an outstanding Director, Bill Brainard, who is as cooperative as you could be. I want to make that public record.

Mr. Brainard couldn't be here. Don't you dare transfer him.

But there still are problems. The problem I am referring to involved a shipment of items for use by Local 707 of the Ford Motor Co. of Ontario. Their union had scheduled a picnic involving about 6,000 people, union members and families, at a theme park at Fantasy Island in western New York.

Similar picnics had occurred before, and what distinguished this one and created the problems was the sizable number of people involved. This, of course, was a very significant group for Fantasy Island and surrounding hotel and commercial restaurant interests.

Next weekend, the European Parliament is coming to the United States and to Washington DC for a meeting with members of the U.S. Congress. We were going to take them down to Chautauqua County and the Chautauqua Institute. We are going to take a day off and go to Niagara Falls, New York, and Ontario, to look at the vista from both sides. It is the Niagara Peninsula, and just as people from the United States go to a theme park in Canada, people from Canada should be able to go to a theme park in the United States.

Fantasy Island booked Canadian groups to use the facilities in the past, making arrangements to have picnic party materials and prizes passed through Customs in small loads and individual cars, but this was the largest picnic they had arranged and it required a sizable shipment of prizes and favors.

It was consolidated in a single large shipment by truck. Smaller shipments in car trunks had been waived through. Local Customs notified Fantasy Island last Thursday that it could not make similar concessions for such a large and conspicuous shipment. It advised the theme park to hire a Customs broker and pay duty on the shipment.

The theme park had sold the union on the location with the understanding that transporting the picnic materials across the border would not be a problem. They were ultimately willing to pay Customs duties on the shipments, although it seemed excessive for items that would be going back to Canada in a matter of hours.

The formal entry was virtually impossible. The shipment included small radios requiring separate FCC approval and a number of textile items requiring certification and textile quota approvals. No Customs broker was willing to post bond for the shipment under formal entry procedures because of the requirement to provide all forms and quota visas within 10 days, procedures that can often take months, particularly for a textile quota clearance.

Well, I won't go into all the difficulties. Of course, the theme park called their ombudsman—me—and I called my staff assistant, Mr. Sagar.

We did the best we could, and we resolved it with the help of Customs in a satisfactory manner.

But it was clear, if I could become more general now, just using that as a specific, that Customs did not have a policy to cover the situation despite the fact that similar problems had occurred, although on a smaller scale, on numerous occasions in the past. In the absence of guidelines, individual customs officials are unwilling or reluctant to make decisions with respect to specific shipments.

Ultimately, working with Customs staff, we did get most of the shipment through; not all. I think this exemplifies a problem of lack of Customs guidelines to cover many situations that may be occurring on the border on a daily basis. I recognize there are some guidelines in these areas, but I don't know how well they are communicated, because from what I hear, they are being applied indiscriminately or perhaps in a manner that doesn't recognize the spirit of the Free Trade Agreement.

I think it is important that in situations like this, there are procedures established within Customs to permit policy guidelines to be clarified or developed. Most importantly, whatever policy guidelines or clarifications are developed in the future should be communicated to every Customs office at border crossings. What could be done to improve a situation such as this?

I happened to go out to this theme park on Sunday for another union picnic of 4,000 employees. I had to listen to this story at great, great length.

Mr. SIMPSON. Mr. Chairman, I know that for Americans and Canadians living on the border, the border is sort of a fuzzy concept. They are accustomed to moving back and forth across the border on business and vacation travel, and for them the border doesn't seem to have as much significance as it seems to have in Washington.

Chairman LAFALCE. Come to western New York this weekend. We will have lunch at Skyline Tower, go on the Maid of the Mist, have dinner at the Prince of Wales—I am touting Canada now.

Mr. SIMPSON. Let me give you a different perspective, not necessarily the right perspective. We don't have a Customs union with Canada. We were interested in that, but it wasn't politically attainable, so, as a legal matter, the border is still very much there.

In the past, when these small shipments of favors and gifts have come across in connection with picnics and such, we have been asked by local Customs people, "What shall I do? Here is a small shipment of party favors; should I apply the law?"

Our response has been, "Don't be stupid; look the other way." But technically, that is illegal. When this last shipment came in, it wasn't a small shipment, it was a big shipment, and there was a lot of quota material there, so the question came again, "What shall we do."

The answer we have given in the past was, "Don't be stupid, look the other way." With a shipment this large, I guess we caught our breath a little and didn't react as quickly as we should have.

Once, at a hearing, one of my previous bosses was asked by John Dingell, why the Customs Service can't use common sense in dealing with these problems; and the answer is, of course, we can, but on the other hand, we have to comply with the law and sometimes the law doesn't give us free license to exercise common sense.

We had a situation here in which Bill Brainard was stumped. He knows what the law requires and yet common sense told him not to make a big deal of this. We can have a policy for him and other district directors that says, essentially, in the past you have ignored small shipments of goods like this; in the future, we want you to ignore larger shipments. But that is one more step toward taking the position that common sense should be allowed to take precedence over strict application of the law. That is something I think we need to be careful about.

There are a lot of situations in which the law doesn't make sense, but I think we want to be cautious about telling employees of the executive branch of Government that if Congress passes a law that seems to you dumb in some particular circumstance, just ignore it.

I think we want some pretty careful limits on that.

Chairman LaFalce. I appreciate that. I do not mean to minimize the difficulty involved by ridiculing the situation in the slightest. But I wonder if there isn't some way of dealing with it.

How about you gentlemen, Mr. Sherman, Mr. Vanderwal, Mr. Hemley, Mr. Hachee—is there a way to solve the dilemma of applying the law and using common sense? Are there any comments you could make that would be of help to Mr. Simpson, to myself, to the Customs agents?

Mr. Sherman. I think there may be machinery available in what is known as the carnet arrangement, a French term, in which the Canadian authorities would certify that the goods are temporarily coming into the United States, and will be returned, and then certify that they have gone back at some future date.

That is accepted by U.S. Customs. I don't know if it would fit the particular products. If you got into quota, it would probably trip up at that point.

For most things, that might be a very simple way in which the Canadians can take care of their problem and U.S. Customs will have a piece of paper that they can rely on.

Mr. Hachee. I am not sure of the citation, but perhaps section 321 of the Tariff Act might contain some language that would allow some type of directive. As Mr. Simpson mentioned, there is a section in the law that allows the Treasury to waive the collection of duties and the formal entry process, I believe when he determines that the revenue indicates it is not a worthwhile effort.

You might look at that section.

Mr. Simpson. We do have authority, although it is not entirely clear, to forego collection duties in some circumstances. That is an authority that, as I say, is not very clear, but we don't have the authority——

Chairman LaFalce. Where does that authority exist?

Mr. Simpson. I will find that.

Essentially, it is the authority that allows the inspectors at the border to forego stopping cars to collect a dollar's worth of duty on something.

It is a law that takes into account the common sense. However, there are laws other than duty laws, revenue laws, that don't include such waiver authority, the textile quota laws, for example.

Mr. Sherman's suggestion is one we would be happy to work with, but it still requires that an in-bond entry be filed.

Mr. Sherman. I believe the bond can be filed either with or by the Canadian authorities.

Mr. Simpson. We would accept that, but even that is a little more red tape than the organizers of this picnic had in mind.

Chairman LaFalce. Yes; quite clearly. Any red tape is always more than anybody has in mind.

Mr. Sherman. If they invite the carnet issuing authorities to the next picnic, it will work very smoothly.

Chairman LaFalce. OK. Good.

Counsel suggested it would be wise, and I concur, to ask Mr. Hachee to comment on the proposed resolution of the field three problem that Mr. Simpson has articulated. Is it adequate to meet the difficulties that you have pointed out in your testimony?

Mr. Hachee. I believe that Mr. Simpson made two statements. One was reiterating an established rule or practice already, and that is that the document is acceptable if it bears either the name and address of the buyer or the name and address of the importer of record in the other country.

That change has been in effect for some time, and it was at that time a significant improvement. However, what we are now suggesting is the complete elimination of the requirement for that information. To that point, I believe Mr. Simpson expressed a willingness to look into it.

We think that it is a major issue. It is a significant amount of work for exporters, too, besides the questions of security of business information and distributing customer lists across the landscape.

Mr. Simpson. You are referring to the blanket certifications?

Mr. Hachee. Yes.

Chairman LaFalce. We have a hearing this morning, and we happen to have some experts from the private sector and representatives from Government. But when there are not hearings, surely there must be some mechanism for dialogue between the Government sector and the private sector. I hope it is something more than an ad hoc situation.

I hope it has some type of organization, structure, some predictability to it. Could you explain to me if there is such a mechanism for dialogue between the private and the public sector, what it consists of, its predictability, when it meets, how agendas are set so that these type of issues can be discussed?

Mr. Hemley. We have it on an ongoing basis as far as our committees go on various subjects where we invite Government to be present, and, therefore, we discuss the problems. I could point out numerous problem areas with Customs that were solved at the working level.

As to this type of problem solving, if it was a committee problem, we would have working-level Government representatives present and wouldn't get to this higher level present here. That is an ongoing procedure we follow all of the time.

We are careful not to be adversarial about it. In addition, at the meeting I mentioned with Mr. Simpson and others on the United States-Canada Free Trade Agreement, we had our meeting. We gave our topics. They say they are going to interface with us.

We hope it will continue.

Chairman LaFalce. When was that meeting?

Mr. Hemley. March 20.

Mr. Simpson replied that we would have another meeting in 6 months. They also indicated, in the meeting with Canada Customs, that our topics would be brought up, and we would have a response.

They just had the meeting last month. I will contact them in writing or otherwise refer to Mr. O'Donnell from Customs, who was our contact—and ask them what happened on the problems we noted.

I think you are right, there must be such a mechanism for ongoing dialogue.

Chairman LaFalce. This, of course, is a dialogue that you generated and created as a single association. I assume, Mr. Sherman, your association does somewhat the same thing?

Mr. Sherman. We have a regular, ongoing, more or less, six times a year, private sector meeting with the Commissioner of Customs to discuss whatever either side is interested in discussing about existing problems or new problems that are brewing.

We also, just 2 days ago, had our annual meeting at which a number of Government officials on currently controversial or evolving subjects were invited to speak. We had a seminar on this very subject that we are discussing here today—I believe it was last October—addressed by the chief authorities within Canada Customs, Revenue Canada, and U.S. Customs at which these things could be discussed in a kind of a working session with people who were particularly involved with implementing it, and with living with it, and with working under it.

I think that there is pretty good access back and forth.

Chairman LaFalce. Mr. Simpson and Mr. Jacobs, our public witnesses have talked about discussions which they have initiated. But is there some umbrella council with which you meet with some frequency regarding either, first, all Customs problems involving imports and exports from all nations, and/or, second, Canadian imports and exports in particular?

Mr. Simpson. Yes, sir; there is. Let me begin by saying that we are very fond of ad hoc meetings because they allow us to jump on problems quickly as they arise.

Chairman LaFalce. There will always be ad hoc meetings.

Mr. Simpson. Yes; however, we have regular meetings, too. There is a Treasury Advisory Committee created by law 2 years ago. Peter Tower of C. J. Tower, Inc., is a member of that Treasury Advisory Committee and has never been reticent about letting us know about problems.

We also have a fairly new institution on the Canadian border called Operation North Star, which is there to work with the business community and with Canadian Customs on the northern border.

Chairman LaFalce. That has a nice name, Operation North Star. It sounds forceful.

I don't know that much about what it does, and what it means, what it stands for. What is it all about?

Mr. Simpson. The idea is, and I am probably getting into water over my head, that we will coordinate and arrange for communication among both business and law enforcement people on both sides of the border, so that problems can be taken care of locally. It extends all across the border, even though headquartered in Buffalo.

Chairman LaFalce. Who is in charge of it?

Mr. Simpson. Kevin Cummings.

Chairman LaFalce. Is he back, living in Buffalo?

Mr. Simpson. Yes.

Chairman LaFalce. When did he return?

Mr. Simpson. I am going to guess 4 months ago.

Chairman LaFalce. Mr. Jacobs, I appreciate the fine work that the Department has attempted to accomplish, and has accomplished with regard to the Canada First Outreach Program and many of your seminars and publications, all of which have been extremely good. Despite all these efforts, there appears to be a great need still for information and practical training on FTA procedures among U.S. businesses. I think this was illustrated in Mr. Vanderwal's testimony where he notes that Canadian importers find a serious lack of information and knowledge about FTA requirements among both U.S. producers and exporters.

I know in western New York, for example, we talk about the need for an ombudsman. Of course, we have a Customs office there, and we have a Department of Commerce office in both Buffalo and Rochester where you can call, and we have some excellent people there.

Are you contemplating other approaches that could be tried and would be more effective?

Mr. Jacobs. We are also trying to locate and work with as many locally based development agencies as possible, to work with them in formulating programs that would meet individual needs.

Chairman LaFalce. We have a western New York Canadian-American Trade Council, which will be having a hearing in western New York Tuesday, June 19, for every individual to come in and discuss problems in implementing the FTA.

Mr. Jacobs. We met recently with the Western New York Economic Development Agency——

Chairman LaFalce. The Western New York Trade Council is a council within the Western New York Economic Development Corporation.

Mr. Jacobs. We will try to work with them to develop some additional programs that will meet the needs of the local community. Obviously, we can't expect to design something from Washington in my little office on 14th Street, a program that is going to meet the needs of the entire exporting community throughout the

United States, but we are looking for local organizations with whom we can work to adapt our programs to meet local needs as well as working with district offices and local economic development agencies to try to do that.

There is always room for improvement, Mr. Chairman.

Mr. **Sherman**. I would like to point out something that gets involved when you try to do what you are talking about and which we have tried to do, and that is that the problem we have been discussing here today is primarily a matter of establishing origin and when you do that, you have a U.S. producer, for example, certifying origin, but it has to be acceptable when presented, in effect, by the Canadian importer to Canadian Customs and vice versa.

You get Canadian origin established in Canada on a Canadian form, but it has to be accepted by U.S. Customs. In our Government, on the import side is the Customs, and on the export side it is Commerce. So, you get two agencies on either side of the border and you have to get into a fairly complex interplay and make sure that the two Governments are coordinated as well as the private sector being informed.

it is rather intricate and that is part of the background of the problem.

Mr. **Jacobs**. We have been working United States and Canadian Customs, and I think most of our seminars last year on the Customs rules of origin, we put on with Canada Customs, so, I think we have good working relationships.

We know that we can't answer all the questions, and we try to work with people who can help.

Chairman **LaFalce**. Do you have lead responsibilities in educating American businesses about implementation of FTA?

Mr. **Jacobs**. Yes, sir.

Chairman **LaFalce**. To my knowledge, I don't know that there is a comprehensive summary of the products for which tariffs have already been removed or substantially reduced. Is that correct?

If that is correct, it would seem to me to be a major oversight.

Mr. **Jacobs**. We do have a summary of tariff removal as well as—I can forward that to you—the next thing we are working on is information on the acceleration that took place April 1 of this year, because that threw out of whack everything produced already since we are speeding up elimination on certain tariff items as well. The ones that are already duty-free is what you are asking about?

Chairman **LaFalce**. Not just duty free, but also tariff reductions. How long would it take to update something effective as of April. What are our projections for coming out with some comprehensive document?

Mr. **Simpson**. Mr. Chairman, there is a comprehensive document. It was first presented to the Congress for approval as was required under the terms of getting congressional endorsement for the agreement.

It is a fairly thick document, organized along the structure of the harmonized system tariff. It is in three parts, those items on which the rates of duty went to zero immediately, those on which there is a 5-year phasedown, and those on which there is a 10-year phasedown.

As acceleration is negotiated between the United States and Canada, that document is updated. There is some delay in getting replacement pages printed, but I am sure that U.S. ITC and Commerce are doing their best.

Chairman LAFALCE. What do we project is the date for incorporating the April first changes into whatever document exists?

Mr. JACOBS. We will probably have that done in the middle of the summer, end of July. The problem is there are lists and lists of H.S. numbers that appeared in the announcement, so that has to be translated into usable words.

Mr. VANDERWAL. The problem, it is very difficult to have generic descriptions of products and accurately indicate to companies who are not familiar with the harmonized tariff how the tariff reductions have taken place. It can easily be misleading when generic descriptions of products are given rather than the harmonized tariff descriptions.

The harmonized tariff descriptions of the tariff itself, as constantly amended, is the most comprehensive document available.

Mr. SAGAR. I think the major concern is that in all the promotion on the FTA to date, we have seen only examples of the various categories of tariff reductions. There has not been released, what several Buffalo radio stations and business groups have requested, a good comprehensive summary of tariff reductions for this year, as well as potential changes next year, the following year.

One of the public witnesses today has mentioned that by 1992, 40 percent of all the tariffs will be removed. How could this information be targeted and packaged in something that is smaller than the telephone book that would be useful to the public. This might spur the kind of publicity and interest in learning about free trade that we are talking about?

Mr. JACOBS. Off the top of my head—I will have to get back to you. You are right. Most of what we have produced is a summary aside from the full text of the agreements, which lists every product and its elimination period.

I found the summary of tariff removal under the Free Trade Agreement, which gives in a broad brush stroke when tariffs are being eliminated for a specific category. Trying to do something more specific than that will take more time and figuring out what will be most useful in terms of somewhere between the very brief and the very broad.

I will be happy to work with you and others to find that.

Mr. HEMLEY. Could I ask a question related to procedure training that one of our major companies asked me about. This is not the first Free Trade Agreement. There is a United States-Israel Free Trade Agreement and while the volumes might be different, they never have gone through such a complex need for training, and they have never been audited to date.

It has been in operation for a couple of years now. What is so different about this besides the volume?

Chairman LAFALCE. I don't know that you can minimize the importance of the volume.

Mr. Simpson or Mr. Jacobs, can you comment?

Mr. SIMPSON. I think you are right, Mr. Chairman. In fact, when I commented that this is our first experience with being the recipients of tariff preference, I think I remember saying this is our first significant experience in being the recipients of tariff preference.

I think the volume of trade that we will see under the Free Trade Agreement with Canada is vastly greater than we will see with Israel, although we would like to improve our trade with Israel.

Chairman LAFALCE. Mr. Jacobs, the Commerce Department had given some funding, I believe to the Pacific Northwest Enterprise Council in Seattle through their Economic Development Association.

The premise was that training in free trade procedures is best done by private entities that can provide direct business-to-business training and assistance. Are we contemplating doing more of that? Is it done more effectively that way?

Mr. JACOBS. We certainly do think that working with locally based trade organizations to adapt programs to meet local needs is a better way of doing it than sending out materials from Washington. Our Economic Development Administration provided grants to Pacific Northwest local agencies to develop local programs in cooperation with our district offices in Seattle and Portland and used Commerce Department materials, which my office prepared.

I tried to get in touch late yesterday with the Economic Development Administration to see if there were any other grant programs that they had in mind to do that sort of thing, and was not able to get hold of the person in charge.

I can check on that and get back to you.

Mr. SHERMAN. The New York State Bar, at least, has attempted to set up a program. The bar association has a program that would make brief consultation with volunteer lawyers from their group available to potential exporters who would like to know what is available to them in an attempt to stimulate smaller businesses and others who have not previously exported to find out what the prospects may be, and that is a local grass roots kind of thing.

I don't know whether it has been used much, but I am sure there would be lots of people available if anybody wanted to begin to organize industry to take advantage of that.

Chairman LAFALCE. Mr. Simpson, you mentioned earlier that there is some type of omnibus advisory council, but we didn't flesh that out before you started discussing Operation North Start.

Mr. SIMPSON. There is a Treasury Advisory Committee on Customs' Commercial Operations. If I recall, it was established as part of the Omnibus Trade and Competitiveness Act of 1988.

There are 20 members. They are required by law to be limited to no more than 10 with the same political affiliation. They represent all of the groups in the country that are affected by Customs operations—importers, exporters, big and small, Customs brokers, shipping lines, trucking, railroads, airports, and airlines. We have had 2 years of experience with that advisory committee now, and we have been very pleased with the comments we have received.

They meet quarterly, and we are in the process now of renewing the charter for the committee for another 2 years.

Chairman LAFALCE. Are any of you gentlemen or your associations on that committee?

Mr. SHERMAN. Yes; the chairman is a member.

Mr. **Hemley**. We have an objection to the way they have formulated that committee.

Chairman **LaFalce**. You mean you are not on it?

Mr. **Hemley**. That is our main objection, and that it seems to be devoted to the most vociferous proponents—in other words——

Chairman **LaFalce**. Proponents of what?

Mr. **Hemley**. Of their case. There seems to be a list——

Chairman **LaFalce**. The squeakiest wheels?

Mr. **Hemley**. That is right, and we have many members who feel they are not represented on that committee, and they object to being told that they are, which they hear—and often it is competitors who are on the committee.

So, I would like to suggest that when we are evaluating this, they re-evaluate who the membership is.

Chairman **LaFalce**. Mr. Simpson suggested that this was created by law, but did the law tell you who must be on it, that there must be a limit of 20, et cetera?

Mr. **Simpson**. The law limits the membership to 20. It puts limits on the political affiliation of the members, and it requires us to draw from a wide geographic and industry background.

I might point out that both Gene Milosh from AAEI and Peter Tower from C.J. Tower are on the committee, so there are at least two persons at this table who are represented.

We picked the squeakiest wheels. We were very conscious of the potential criticism that we had filled the cage with house cats rather than tigers, so we have a mouthy committee.

I would be happy to accept Mr. Hemley's advice and do it a different way next time.

Mr. **Hemley**. I will be happy to communicate with you.

Chairman **LaFalce**. Sometimes Congress must act on large legislative measures that contain individual provisions that can be overly specific or restrictive. If we said you couldn't have more than 20, I think that is ridiculous. Perhaps the law states "at least" 20 members, or only 20 official members. I don't know why you couldn't have honorary members with full rights. Many parliamentary bodies may have membership limits, but they also have alternate delegates, and they speak out the same, and often nobody knows the difference between a delegate and an alternate delegate.

Before you had a formal advisory committee, you must have had advisory councils. You should be able to continue having advisory councils in addition to the advisory committee mandated by law. I wouldn't feel overly restricted by the law.

I think this is where the application of common sense might easily prevail without fear of punishment.

Mr. **Simpson**. If I may, for as long as I can remember, we have had regular meetings at least quarterly with the National Customs Brokers Association.

Chairman **LaFalce**. Sort of like our quarterly meetings with this committee.

Mr. **Simpson**. And with the American Association of Exporters and Importers. Those are regular meetings and they have been held for years.

In addition, we have had ad hoc meetings for years with Mr. Hemley's group and others.

Chairman **LaFalce**. Are there any specific problems that you do not think have either been addressed adequately in the past by Customs, or adequately discussed this morning, that you want to have discussed further?

Mr. Vanderwal.

Mr. **Vanderwal**. One thing we haven't gone into too deeply is the FTA audit. There have been comments made that perhaps in the initial period there may be somewhat lesser quality in the certificates of origin. An audit may show that, in fact, companies that completed them didn't do so correctly. I note in the example of Mr. Hemley's testimony that this particular company received a request for information on 13 products. I have heard from companies who have had their suppliers in the United States receive all at once a request for verification, an audit request, for as many as 27 items. The company would have greatly preferred if they didn't all come at once, because it created an enormous sudden amount of work for the people there to come up with verification on that many items.

So, perhaps, we are going to be seeing more audits as there may be some tolerance in the initial periods of Free Trade Agreement implementation. This tolerance will likely gradually be changed as the difference in duties between the Most Favored Nation and the free trade become greater over time and companies become more familiar with compliance. Some staging in terms of the number of items audited per supplier would certainly be useful.

Chairman **LaFalce**. Mr. Hemley.

Mr. **Hemley**. You said are there many others—several pages of items—that weren't the subject of this meeting. But we are addressing them.

We have a dialogue with Government ongoing. I can't object that we don't have a dialogue going, but there are outstanding problems. I hate to go back to my people who may say you didn't say there are other problems, there are plenty.

Chairman **LaFalce**. Thank you very much, gentlemen. I hope this has been helpful to all of you.

I believe it should have been. That was my purpose.

One point I haven't raised so far, which I will address primarily to Mr. Simpson. We cannot take full advantage of the Canadian-American Free Trade Agreement unless we have the appropriate infrastructure, and I have been working with local authorities and commissions to improve our infrastructure.

Recently, the Niagara Falls Bridge Commission announced a $30-million improvement to the American side of the Rainbow Bridge. We will be increasing capacity, from 8 to 20 inspection booths on the American side, and from 5 to 6 toll booths. This will be a very major development.

The Canadians have already begun construction, an increase from 6 to 10 inspections booths on the Canadian side, but they are going to have to do better than that because if we are going to have 20 inspection booths, and they are going to have 10, that is not going to cut it.

I think they have the capacity to go to 18. It will be necessary for the existing booths on both sides to be fully manned. Manpower is necessary on both the American side and the Canadian side at all the border areas, Customs and immigration, and Customs and Immigration can't be daunted by OMB restrictions.

If you know these improvements are needed, as I know we need more personnel, we must speak out. I have been speaking out rather quietly within the United States trying to get more, not just for the sake of having more, but for the sake of facilitating the increasing traffic.

It is going to be necessary for me to begin speaking out in Canada, too, because we need more personnel from Canada, and we need more facilities in Canada. We can't have slowdowns, et cetera, which deliberately thwart the flow of goods and people back and forth across the border.

We must begin to contend with that. Let's not forget that what we have talked about this morning is very, very important. But we need the physical infrastructure across all our borders, and we need Government manpower in order to handle this increased flow.

We have had tremendous increases in trade and tourism, in western New York alone, in the year since the FTA has been implemented.

Thank you very much.

[Whereupon, at 11:10 a.m. the committee was adjourned, subject to the call of the Chair.]

APPENDIX

STATEMENT OF THE HONORABLE JOSEPH M. McDADE
VICE CHAIRMAN
HOUSE SMALL BUSINESS COMMITTEE
REGARDING THE U.S.-CANADA FREE TRADE AGREEMENT

****

Mr. Chairman, I want to commend you for convening this hearing today regarding administrative impediments to trade under the U.S.-Canada Free Trade Agreement (FTA) and for your continued vigilance in monitoring the effect and ramifications of the pact. As is usually the case, and probably so here as well, any barriers to exporting, whether the firms involved are shipping goods to Canada or Asia, most likely affect small businesses. Thus, it is of critical importance that this Committee keep a close eye on how small firms are treated under the FTA.

Further, it is also important that policymakers learn from the U.S.-Canada Free Trade Agreement experience. As we have seen in recent days, other nations, most prominently Mexico, wish to be included in a similar type accord. We will hear testimony today on the pitfalls and shortcomings of the pact, and we need to ensure that companies of all sizes, especially smaller firms, will not be disadvantaged by future agreements.

In conclusion Mr. Chairman, at a time when only about 8 percent of all firms with fewer than 100 employees are exporting, when the nation is running a staggering trade deficit, and when the world seems poised at the beginning of a new era which will emphasize economic might over military strength, the vitality of our nations small exporters should be protected and enhanced.

Thank you, Mr. Chairman.

STATEMENT OF LOUISE M. SLAUGHTER

Before the

HOUSE COMMITTEE ON SMALL BUSINESS

JUNE 15, 1990

The U.S.-Canada Free Trade Agreement, signed in 1988, set the stage for the creation of new trade opportunities on both sides of the border. This agreement has been particularly important to Western New York because of its proximity to major Canadian markets and urban centers.

In 1988 alone, 49 percent of Rochester area exports were sent to Canada, and 30 percent of imports into the Rochester area originated from Canada. In dollar terms, this amounted to over $5.25 billion in bilateral trade. Nationally, commerce between our two nations exceeded $160 billion last year. The U.S. exports more than twice as much to Canada as to Japan, our second-largest trading partner.

The extent to which Western New York and other regions gain from these new relations, however, will depend on how well we identify the issues facing us in implementing the agreement, and how well we resolve the problems that arise. So far, the implementation has been going well, marked by an accelerated reduction in tariff rates and expanded interest in our neighbor to the north. But it could be better.

In recent discussions with both business and government officials, I have noticed certain recurring themes. Most of them relate to the less glamorous dimensions of exporting, such as customs barriers, certificates of origin, and government bureaucracies. Yet it is precisely these types of "non-tariff barriers" which hinder the full potential of the bilateral trade agreement.

For example, the rules of origin and the certificates of origin, which are integral elements of the U.S./Canada Agreement, pose many difficulties. The paperwork requirements are burdensome, and the interpretation of specific provisions differs between provinces and agencies. Furthermore, it is not clear how much information an exporter must provide in order to substantiate a claim of product origin. In many cases, such disclosures can threaten the confidentiality of the product formula. I also note that these issues have been controversial in the European Community's internal discussions as well.

Questions ranging from customs delays to breaches of the agreement and unfair trade allegations raise additional problems. As I understand it, there are meetings between the various agencies of both governments aimed at resolving issues of contention. I am pleased that there is a recognition of the problems at this level, and steps taken to address them. I would, however, like to have the Administration representatives who are here today update the committee on how these discussions are going and what can be done to improve such efforts.

Problems with the the certificates of origin, the harmonization of standards and other areas have not been experienced with previous trade agreements, such as the Israeli/U.S. agreement, since most of those were based on a Most Favored Nation duty regime. Unfortunately, these problems are likely to recur under future agreements modeled after the FTA, and perhaps to a greater extent with economies which are not as similar as the U.S. and Canadian economies.

It should also be recognized that these issues are not unique to American firms trying to export to Canada. I recently received a study performed by the Canadian government, which was sent to me by Mr. George Musgrove of the Canadian Consulate in Buffalo. This report was a survey performed in March of this year of small and medium sized businesses across Canada, specifically regarding Section 708 of the Free Trade Agreement. Some of the many observations and conclusions from this report include:

-A need for a uniform interpretation of regulations at various border points.
-Consideration for a standardization of documentation.
-A need to communicate information on the FTA to U.S. regional offices and border points to facilitate mutual understanding of the spirit of the Agreement.
-A need for a coordinated communication document to inform small business of new developments and policies under the FTA.
-A need for a point of contact for business when in need of resolving a problem.
-A suggestion was made to have in Canada a U.S. office, and in the U.S. a Canadian office, to provide information on regulations, and to direct information requests to the appropriate federal office in dealing with specific issues.

It is obvious that there are real problems out there for those businesses, particularly small businesses, which are attempting to take advantage of the new trading relationship. This is not to say that mechanisms do not exist which are meant to address such issues and facilitate the implementation of the agreement. However, something is not working, and I would hesitate to say that it is caused by a lack of agency involvement.

Currently, the Department of Commerce is involved, the Treasury Department, the USDA, the USTR, the SBA, as well as the State Department. Within these agencies, there are also the various offices and bureaus which interact with businesses, such as the Customs Service, the Foreign and Commercial Service, the ITA, the FDA, the Office of Canada, the OIT of SBA, SBDC's, and the various district offices of DOC and SBA. And this is only in the U.S. bureaucracy!

The question remains, though, when a small business has a problem, whom should they contact?

The points made in the study, and the issues which many of today's panelists will be raising, highlight the need for a coordination of current activity. We must not allow administrative difficulties to diminish the inherent worth of the FTA. To prevent the establishment of new barriers in place of those we have just eliminated, the U.S. and Canadian governments must take steps to resolve these institutional problems. The most meaningful step we could take right now would be to designate a Free Trade Ombudsman to facilitate and coordinate the implementation of the U.S.-Canada agreement.

The Ombudsman proposal is based on this need for coordination, and would oversee the trade activities of various federal and provincial government agencies. It would also resolve technical disputes concerning the implementation of the free trade agreement. Most importantly, this Ombudsman would provide a single point of contact for businesses with questions or complaints relating to the agreement, and also act as a liaison between businesses and the U.S. and Canadian governments.

There are three dimensions to the problem which a designated Ombudsman would need to address: the coordination of current efforts by both U.S. and Canadian governments, dispute resolution, and the need for a single point of contact for businesses seeking help or redress of grievance. A single office, such as an expanded version of "the Secretariat" created in the implementing legislation of the FTA, which would have a counterpart in the Canadian Government could fill all these needs. Designated field representatives located in border states and provinces would be helpful as well.

The important elements of such an Ombudsman would be the contact between the respective U.S. and Canadian offices, the intra-governmental contacts, and the ability to resolve minor disputes.

The key lies in the designation or recognition of a single point of contact. There is no need to create another bureaucracy to deal with administrative and technical trade disputes. As I mentioned before, the trade bureaucracy in Washington currently involves hundreds of employees and a multiplicity of federal departments and agencies. The Ombudsman is premised on coordinating these efforts, not duplicating them. An Ombudsman would help businesses navigate through this complex regulatory labyrinth so that they might be able to concentrate their full energies on the true goal of trade: expanded economic development.

An Ombudsman mechanism would be useful to business men and women, and would meet a critical need of business. I know this because the idea emerged from meetings I convened with business leaders in Rochester, New York. As the Chairman of this Committee knows, these business people are not new to the international trade game. The Rochester area accounts for about 45 percent of all exports from New York State.

Individuals within the Administration may have other ideas as to which existing office or department could best carry out this mission. I know that the Office of Canada, a representative of which is here today, handles many of these issues, and is a member of the "Customs Working Group." Unfortunately, with its current funding and staffing situation, it currently is not in a position to take on such responsibilities. I would appreciate having the thoughts and comments from today's panelists on the idea of an Ombudsman, and the best way of setting it up.

I have recently sent a letter to U.S. Trade Representative Carla Hills urging consideration of the Ombudsman proposal as an answer to the problems raised here today. The letter was cosigned by colleagues who served with me as members of the Canada-U.S. Interparliamentary Group meeting earlier this year, including the Chairman of this committee, Mr. La Falce, as well as Mr. Gibbons, Mr. Fascell, Mr. Gejdenson, Mr. Upton and Mr. Oberstar. I will submit a copy of the letter for the record.

Generally speaking, we all may have our own ideas on how to structure such an Ombudsman, but the specifics on how we construct the office are not as important as the function it serves. A need exists, and this is a proposed solution.

We all recognize the historic significance of the U.S.-Canada Free Trade Agreement, but it is also important to recognize that this document will be a model for future bilateral trade agreements. A North American Free Trade Agreement is now a distinct possibility.

Trade between U.S. and Mexico, totalling more than $50 billion in 1988, has increased dramatically in the last several years. More than thirty companies in Rochester currently do business with Mexico, and negotiations for an agreement with Mexico are already underway. While an agreement with Mexico will be much more difficult to draft, the U.S./Canada FTA will serve as a precedent and an example of an intelligent approach to resolving bilateral differences in a mutually acceptable manner.

Future changes in international marketplaces, such as the European Community integration of 1992 or other events in the Pacific Rim and Eastern Europe, may inspire new bilateral negotiations. Multilateral agreements are important, but recent history is demonstrating the increasing importance and effectiveness of bilateral agreements in shaping our trading relationships. It is imperative, therefore, that we work out existing problems with the U.S./Canada agreement and do all we can to simplify the bureaucratic processes involved in exporting to encourage increased trade between our nations. A Free Trade Ombudsman would help us achieve these goals.

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May 18, 1990

The Honorable Carla A. Hills
United States Trade Representative
Executive Office of the President
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ambassador Hills:

We would like to compliment you on your efforts in representing the United States in the various trade talks currently underway around the world. We are particularly pleased with the developments of the U.S./Canadian Free Trade Agreement (FTA). However, there are two problems that we would like to bring to your attention.

Having spoken with businesses groups and individuals who are attempting to take advantage of the easing of trade restrictions between the U.S. and Canada, several points arise consistently which need to be brought to your attention. Specifically, there is the question of certificates of origin, and the problems created by the complexity of the certification process. There is also a need for a single point of contact for businesses with questions or problems attendant to the agreement and its implementation.

As one would presume, these problems are not limited to our domestic producers. Attached is a report provided by Mr. George Musgrove, head of the Canadian Consulate in Buffalo, New York, who sent Representative Slaughter this recent survey of Canadian small businesses by government officials. Two points brought out by the study were: 1) The need for a central contact point for small businesses when experiencing problems, and 2) the complex problems of minor standards deviations and uneven border enforcement.

During the Inter-Parliamentary Group meeting in South Carolina last month, we discussed the creation of an office which could coordinate the trade activities of the various federal and provincial government agencies, and resolve low-level disputes regarding the implementation of the FTA. Such an office could also act as a direct liaison between businesses and representatives of the U.S. and Canadian governments. To be most effective, corresponding offices would need to be set up in each nation.

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In summary, we recommend the consideration of designating a Free Trade Agreement Ombudsman which would facilitate the implementation of this historic agreement. This office would be of considerable benefit to businesses on both sides of the border. One alternative worth examining would be to expand the current role of the Secretariat created in Article 1909 of the Agreement. This would be consistent with the dispute resolution process set up by Chapters 18 and 19 of the FTA, and would add a lasting dimension to the panel structure.

We would appreciate your thoughts on this issue considering your lead role in the inception and implementation of the agreement. Thank you for your attention to this matter. We look forward to your response.

Sincerely,

Sam M. Gibbons
Rep. Sam Gibbons

Louise Slaughter
Rep. Louise Slaughter

Dante B. Fascell
Rep. Dante Fascell

Rep. Sam Gejdenson

James L. Oberstar
Rep. Jim Oberstar

Rep. Fred Upton

Rep. John LaFalce

REPORT OF THE INTERDEPARTMENTAL DELEGATION CROSS-CANADA CONSULTATIONS WITH SMALL AND MEDIUM SIZE BUSINESS
MARCH 5 - 9, 1990

INTRODUCTION

The following individuals formed an interdepartmental delegation that carried out cross-country consultations on Article 708 of the Free Trade Agreement March 5 - 9, 1990:

- o Mr. R. McKay, CCAC
- o Mr. R. Robinson, ISTC
- o Dr. G. Nantel, HPB/NHW
- o Mr. B. L. Smith, HPB/NHW

All meetings were held at the regional offices of the Department of Industry, Science and Technology in Vancouver, Winnipeg, Toronto, Montreal and Halifax in accordance with the following schedule:

- o March 5 - Vancouver
- o March 6 - Winnipeg
- o March 7 - Toronto
- o March 8 - Montreal (2 sessions, AM and PM)
- o March 9 - Halifax

A total of 58 individuals attended the sessions representing small and medium sized enterprise. The regional breakdown of attendance was as follows:

Van.	Wpg.	Toronto	Montreal	Halifax
4	13	21	16	4

In addition to the representation from the private sector, the sessions were attended by a total of 10 provincial and 12 federal officials.

All participants at the consultations expressed an interest in receiving a kit containing copies of reports of the meetings of the TWG on Additives and Contaminants together with reports of the Sub-Group on Food Composition and an outline of the Canadian Regulatory Process. The representative from the Canadian Specialty Food Association stated that she would attempt to serve as a coordination point for small and medium sized business.

ISSUES ARISING FROM THE CONSULTATION

The issues addressed in the course of the trip fall under a variety of areas. For practical purposes the issues identified have been separated out under appropriate headings.

Administrative Policy

- There is a need for a uniform interpretation of regulations at various border points. In particular a clear policy is needed for perishable products, application of quarantine regulations and the options that are open to an importer whose product is detained.
- Consideration should be given to having a standard document issued by FDA or USDA to the effect that a product or its label has been reviewed and accepted. This document could be presented at the border point to accelerate the process and prevent undue delays.
- There is a need to communicate information on the Free Trade Agreement to US regional offices and border point, so that the spirit of the Agreement is understood and applied.
- There is a need for a resource list on who to access for information on US regulations, whether on standards, labelling or enforcement policies.
- There is a need for a Canadian compliance policy on imports from the US.
- Information is needed on the extent to which formulation information of any particular product is needed for approval, particularly in the area of seasonings and flavours; are there options available to prevent declaration of proprietary information.
- Information is needed from border inspectors on reasons for all border detentions; the nature of sampling and tests to be carried out; the expected delay and options permitted under US law under such circumstances.

Communication and Information Needs

- There is a need for representation of small and medium size enterprises on the TWG's, particularly for the TWG on Packaging and Labelling. A suggestion was made to establish "small business industry advisory groups" for various regions that would report to the Chairman of the Packaging and Labelling WG.
- There is a need for a coordinated communication document to inform small industry of regulatory changes, new policies and updates on developments under Free Trade, whether they be Canadian or from the US.

- There is a need for a Canadian contact point to report to in cases of harassment, in order to provide help in resolving the problem.

- A suggestion was made to have in Canada a US office (and vice-versa) to provide information on US regulations and to direct information requests to the appropriate office in the US for product approval.

- Information is needed on Government programs available to help small businesses, such as the New Exporters to Border States (NEBS) program offered by External Affairs.

Labelling and Composition Issues

- Ascorbic acid and lecithin are considered to be preservatives in Canada but not in the United States. This results in a disparity that a product may be labelled as being "preservative free" in the U.S. but not in Canada.

- Considerable confusion appears to exist about "Country of Origin" rules leading to an unreasonable demand on the part of US authorities.

- The standards for jams differ in Canada and the US, particularly with respect to soluble solids content and fruit content.

- American regulations prohibit the sale of a Canadian fruit drink product containing natural flavouring agents even though the flavouring agents are identified as such on the label.

- A need exists for harmonization of the rules respecting descending order of proportion of ingredient listing; in the US any ingredient comprising less than 2 per cent of the product may be labelled in any order.

- Cost of redesign of labels to meet the regulatory requirements of another jurisdiction was a major concern for many participants. In particular, declaration of net weight (metric vs US measure) and the position of this declaration on the label were highlighted as irritants.

- Several participants suggested that a universally acceptable label format should be the long range goal of the negotiations using the Codex as a base

- Either/Or declarations for ingredients such as fats and oils are not recognized by the USA.

- The Codex standard for Canned Carrots should be considered as a regulatory alternative for both Canada and the USA.

- At the present time no US standard exists for yogurt while Quebec has such a standard. This creates a problem for Quebec produced yogurt sold in the USA in that a typical American yogurt resembles a pudding rather than a traditional yogurt. Perhaps another case where Codex could come to the rescue.

- American apple juice regulations require 12 degrees Brix while the highest Brix level obtainable in Quebec is about 11.2 degrees. The 12 degrees Brix is a barrier to trade and is another case where Codex should be considered as a viable alternative.

Food Additives and Contaminants

- Ethoxylated mono and diglycerides are permitted in American bakery products but not in counterpart Canadian products. This additive evidently affects dough strength and provides the manufacturer with a real market advantage. Similarly, Sodium Stearoyl-2-Lactylate is not permitted in bakery products in Canada but is permitted in the USA.

- A participant at the Toronto meeting suggested that Canada should move toward the European Community levels for the presence of aflatoxin rather than accept the US level of 20 ppb. This observation was based on the probability that Canada would become a dumping ground for American peanuts that could not be sold in the EC.

- Nitrite is permitted in meat balls sold in Canada but is not permitted in the same product sold in the USA.

Other Issues

- The need was seen for a timetable to complete the harmonization process in terms of reducing uncertainty as one of the barriers to trade is uncertainly itself.

- Canada should eliminate the quarantine requirement for pseudo-rabies as this is no longer considered to be a problem. Such action would help reduce tension at border points.

- A need exists for urgent action respecting reciprocity of certification and inspection services. The dairy sector was particularly vocal about this issue.

STATEMENT OF JOHN P. SIMPSON
DEPUTY ASSISTANT SECRETARY OF TREASURY
(REGULATORY, TARIFF AND TRADE ENFORCEMENT)
BEFORE THE
HOUSE COMMITTEE ON SMALL BUSINESS

June 15, 1990

Mr. Chairman, I am pleased to respond on behalf of the Treasury Department to your invitation to discuss implementation and administration of the U.S.-Canada Free Trade Agreement.

Several months ago when your Committee held hearings on this subject we told you that, on the basis of our then very limited experience, we were very pleased with the facility with which the Free Trade Agreement provisions for trade in goods had gotten underway. We had not encountered any significant problems with the provisions of the Agreement itself, and we were working well with Canadian Customs in resolving problems and coordinating administration of the Agreement.

At the risk of being thought incurably Panglossian, let me repeat today that still, after a year-and-a-half of operation under the Agreement, we continue largely to be pleased both with the structure of the Agreement itself, as it deals with trade in goods, and with the level of cooperation between U.S. and Canadian Customs.

We are listening to trade groups such as the American Association of Exporters and Importers, the National Customs Brokers and Forwarders Association of America, the National Council on International Trade Documentation, the Northern Border Brokers Association, and the Treasury Advisory Committee on the Commercial Operations of the Customs Service. None of these organizations has ever been reticent about pointing out the shortcomings of the Customs Service or the defects of U.S. trade laws, and yet they appear to be generally satisfied with the operation of the Agreement.

I believe it is significant that my counterparts in the Canadian Government are experiencing the same reaction from their trade community.

Notwithstanding that these groups and others appear to be generally satisfied with the manner in which the Agreement is working overall, there are three kinds of problems with which we shall have to deal on a continuing basis:

(1) structural problems with the Agreement itself, including those that are specific to narrow trade sectors or small businesses,

(2) occasional differences with the Canadian Government over interpretation and implementation of the Agreement, and

(3) general ignorance or confusion about the administrative provisions of the Agreement on the part of the trade community, and especially small businesses, who don't have the information resources and expert counsel available to larger companies.

By structural problems with the Agreement, I refer to those provisions of the Agreement itself, or laws implementing the Agreement, that need change or clarification. In order to identify these problems and to arrange for corrective action in both U.S. and Canadian law, we have created a binational working group on Rules of Origin and Market Access. This working group met for the first time earlier this year and will be meeting again this summer. We have identified several provisions of the Agreement that one or both parties view as needing change.

Generally, changes to the Agreement to clarify its meaning have been agreed to readily. Other changes, that affect market access or preference eligibility for specific products, will have to be negotiated over a somewhat longer period of time.

With respect to our occasional differences with the Canadian Government over interpretation and implementation of the Agreement, we are very actively pursuing reconciliation of these differences. We have created a second binational working group on Customs Administration. This working group has met regularly, indeed for the first year of the Agreement the group met every sixty days, to resolve differences between U.S. and Canadian documentation and administrative rules, and to harmonize positions taken in interpretive rulings issued to the public.

We are also working with Canadian Customs to simplify the documentation and reporting requirements levied on businesses because we are especially mindful of the need to keep things simple for small businessmen on both sides of the border.

I attended the last meeting of this working group myself, week before last, and I can testify first-hand that there is a high degree of cooperation and flexibility on both sides, and a determination not to allow customs procedures to be an impediment to utilization of the Free Trade Agreement.

Finally, with respect to the rapidly diminishing problem of trade community ignorance and confusion about the Agreement's provisions for trade in goods, we continue to make every effort, as does the Department of Commerce, to distribute brochures and guides, to participate in local seminars for businessmen, and to provide legal rulings as promptly as we can to businesses who request them.

And so, at the risk of exposing myself to some tough questioning from you and your colleagues, Mr. Chairman, I shall reiterate that we are pleased with the first eighteen months of our experience with trade in goods under the Agreement. The structure of the Agreement itself has not been shown to need a major overhaul, and the particular problems we have discovered are being resolved expeditiously with the full cooperation of the Canadian Government.

I am optimistic that if you should have another hearing on this subject in another few months I shall be able to give you the same sort of report.

Thank you.

Statement of
Stephen P. Jacobs
Deputy Director, Office of Canada
U.S. DEPARTMENT OF COMMERCE
before the
COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES
June 15, 1990

MR. CHAIRMAN:

Thank you for the opportunity to testify before the Committee on the implementation of the U.S.-Canada Free Trade Agreement (FTA). Canada is an important country to U.S. trade interests and the FTA is an historic agreement. The Department of Commerce is very actively involved in its implementation.

The historic U.S.-Canada Free Trade Agreement went into effect on January 1, 1989 and businesses in both countries are responding. The FTA will have created the world's largest free trade area, once it is fully implemented in 1998. More important than geographic size, is the fact that the United States and Canadian economies annually produce more than $5.8 trillion in goods and services. To put that figure in perspective, it is more than the entire twelve-nation European Community (EC) produces.

U.S.-CANADA TRADE

Canada remains America's most important trading partner, a fact often forgotten in all the hubbub with other less cooperative partners. Canada took $79 billion of U.S. merchandise exports last year, accounting for nearly 22 percent of global U.S. exports and far surpassing our exports of $45 billion to Japan, our second largest market. Our exports to Canada alone approach the level of our total exports to the EC.

With one and a half year's experience with the FTA, it seems clear that both countries are benefiting from the expansion in trade encouraged by the FTA. Two-way trade in goods and services between the United States and Canada amounted to an impressive $204 billion in 1989.

Our merchandise exports to Canada are up ten percent over 1988, for a total of $79 billion in 1989. Our merchandise trade deficit with Canada shrank roughly 16% in 1989, to a deficit of less than $10 billion. Preliminary reports indicate that large export gains occurred in aircraft, up 53%, aluminum, up 20%, and agricultural machinery, up 30%.

Our current account balance with Canada--including goods, services, and investment earnings--has moved from a negative balance to a positive balance of over $5 billion in just three years.

The Commerce Department has undertaken many activities to improve further on these numbers and to implement the FTA. I will describe them and also explain our "Canada First! Outreach Program" because the need for information is so great.

FTA IMPLEMENTATION

FTA implementation is broad and multifaceted, as is the Agreement itself. The Commerce Department's efforts to implement the Agreement are equally extensive. Our principal objectives are to inform American business of the opportunities provided through the FTA, to help solve U.S. exporters' problems, and to ensure Canadian compliance with its FTA obligations, thereby assuring maximum commercial opportunity from the FTA for U.S. business. This goal translates into many activities of particular importance to the Department.

First and foremost are our efforts to inform the U.S. business community of the FTA's provisions and how it can take advantage of the many opportunities presented by the FTA. Mr. Chairman, you are well aware that the United States will not benefit fully from the FTA unless the business community vigorously pursues the new commercial opportunities resulting from the removal of barriers.

Canada First! Outreach Program

With that in mind, the Department's "Canada First! Outreach Program" has four major objectives:

- First, to educate and energize American firms to take advantage of the many business opportunities created by the FTA, thereby increasing U.S. trade and investment with Canada.
- Second, to inform small and medium size new-to-export firms why Canada is the ideal first foreign market for them, especially because of the FTA.
- Third, to build new exporter confidence to try more difficult foreign markets.
- Fourth, to encourage states, trade associations, chambers of commerce, and others to develop FTA implementation plans for their constituents.

The Outreach Program uses a mix of vehicles to reach a broad range of companies--from small business to multinationals, from first-time to experienced exporters, and from manufacturers to service providers. Within this broad range, our efforts concentrate on small business and on industries with high export potential.

The Department recognizes that Canada offers small U.S. companies a unique testing ground to learn from and experience in selling to a foreign market.

- First, geographic proximity means Canada is a natural market for many American goods and services. The FTA enhances the natural attraction of the Canadian market.
- Second, relatively inexpensive and easily accessible communication and transportation networks between the two countries expedite selling in Canada. For example, shipping from Connecticut to Ontario may be less expensive and faster than shipping to California.
- Third, a common language and similar business practices mean Canada is a relatively easy foreign market for first time exporters.

We believe this experience is transferable. Our slogan, "Canada First!", suggests that once companies master the technique of exporting to Canada, they will be better prepared to tackle other more difficult foreign markets.

Border Seminars

Based on these facts, the Department has launched an intensive educational program, entitled "Canada First! Border Seminar", to take the mystery out of exporting for small, new-to-export companies.

The seminar participants receive basic information on how to export, visit a Canadian city for in-depth briefings on selling in Canada, tour Canada Customs, and receive practical, hands-on briefings about border crossing procedures.

Wisconsin and Michigan participants gave high praise to the two pilot seminars. One participant observed: "The seminar was of tremendous value to me and I only wish each and every U.S. company considering export would put the time and effort into it. You did a great job--try to spread this program across the country."

Beginning this month and next, with seminars for the furniture industry and companies in Ohio, we will conduct Border Seminars monthly. We expect discussions with State trade promotion agencies, trade associations, chambers of commerce, and others, in Illinois, Kansas, and Nebraska will add additional seminars to the schedule.

Other Seminars

Commerce has offered and will offer several other types of Canada seminars. Last year, we parepared or participated in over 100 seminars.

- The Department conducted 48 Customs Procedures seminars in as many cities during FY 1989. The programs, organized locally, featured Commerce Department and Canada Customs officials who shared critical information about the FTA rules of origin and about how to complete the Exporter's Certificate of Origin. Without properly completed documentation, U.S. exporters will not benefit from FTA tariff removal. The seminars attracted some 7,000 business persons.

- Department officials spoke at 89 other programs and seminars on doing business in Canada under the FTA during FY 1989. Most of the events were sponsored by local private sector groups. Trade associations, including the Valve Manufacturers Association, the Leather and Leather Goods Manufacturers of America, and the Furniture Manufacturers Association, have been active in educating their members about the many new FTA opportunities.

- Despite the lure of dramatic political and economic events in Eastern Europe and elsewhere, Canada programs continue to draw across the country. During the first half of this fiscal year, we supported 48 seminars.

We work with State economic development and export promotion offices, trade associations, and other major multipliers to develop their own FTA implementation programs.

Business Counselling Service

Besides the seminar program, our outreach activities include providing Hot Line Business Counselling, averaging 1,500 inquiries a month to our Office of Canada alone. Last year, Mr. Chairman, our Office of Canada responded to over 20,000 inquiries about the FTA, its requirements and documentation procedures. That does not include the thousands of calls handled by our US&FCS offices in the United States and Canada.

We answer a full range of inquiries, from tariff rates to Harmonized System classification numbers, to technical standards requirements, trade shows and trade data. The Office also refers small businesses needing information not available from our office to U.S. or Canadian sources best equipped to assist them.

The most common questions we received over the past year involved the completion of the Certificate of Origin required by the FTA. New systems always generate myriad questions, and the rules of origin in the FTA are new and unique. Together with the U.S. Customs Service and Canada Customs, we prepared a special publication titled Guide to Exporting Procedures, to assist exporters in filling out the Certificate of Origin and understanding the rules of origin under the FTA.

Publications Program

Our contact with the business community through our counselling activity has helped us identify additional publications needs. We have prepared (and continually prepare) a broad range of publications to assist U.S. exporters and investors such as Government Procurement Opportunities in Canada, and Border Crossing Procedures under the U.S.-Canada Free Trade Agreement.

Other titles are:

- Marketing in Canada, containing detailed marketing information on the Canadian market, franshising, standards, transportation, advertising and research, trade regulations and the like.
- Summary of the Free Trade Agreement, a chapter-by-chapter summary of the FTA provisions, a fact sheet and list of contacts.
- Industry Profiles on high export potential industries, including furniture, medical equipment, construction, computer software, sporting goods, and textiles and apparel and conducting FTA workshops for them organized through trade associations.
- State profiles outlining the benefits of the FTA for each state, with leading imports and exports and other important statistical information.

I have brought copies of the types of publications we produce with me today for your review. We continue to work with trade associations, companies and business liaison groups to develop and provide the information American businesses need to access the benefits of the Free Trade Agreement.

We also continue to help solve individual exporter's problems every day as part of our regular business counselling activity. Our knowledge of and contact with Canadian government agencies often enables us to cut through red tape and find the answers. Our experience with the business community also helps us to translate the needs and concerns of exporters for other government agencies with the responsibility for addressing or solving specific problems. Where there is no immediate solution, we are able to put items on the agenda for future negotiation.

Other Implementation Activities

The Department is involved in other aspects of FTA implementation besides the Outreach Program. Virtually every chapter of the Agreement involves the Commerce Department in one way or another.

Although the subject of technical standards may seem mundane, with the elimination of tariffs the temptation to replace them with non-tariff barriers, as well as their relative importance, rises accordingly. We must be vigilant to prevent this.

That is why on technical standards, the International Trade Administration and our sister agency, the National Institute of Standards and Technology, are seeking ways to improve our already good relationship with Canadian counterpart agencies. We have identified areas in which improvements can be made, such as certification and approval procedures, and acceptance of test data. We have begun the data exchange provided for in the FTA and are evaluating proposals for expanded information exchange on the standards activities of states and provinces, and the private sector. With the opportunity to comment provided early in the regulatory process, our exporters will have a chance to influence its outcome.

Commerce has been an active participant in resolving issues in plywood standards. This is a good example of ways we seek creative solutions to long standing and difficult problems. Here we have established a bilateral private sector committee composed of representatives of all the players involved in plywood standards, including builders, producers, standards-writers, building code regulators and the like. The committee is developing the information needed for a common plywood performance standard. It has recently forwarded its recommendations to a joint standards drafting body, which is preparing the text of a common standard. We are hopeful that its work will shortly put this longstanding irritant to rest.

Because of our experience in working with the business community, we participate in the binational Joint Working Group on Border Crossing Procedures and visa requirements. Already the onslaught of requests from business organizations has resulted in an expansion of the categories of professionals who are allowed easier temporary entry under the FTA. We expect this trend to continue as more U.S. service industries take advantage of the service provisions of the FTA and look to Canada for expansion.

Similarly, we are able to relay the needs and experience of U.S. exporters through our participation in the two binational customs-related working groups, Rules-of-Origin and Market Access, and Customs Administration. These groups have begun to resolve problems raised by exporters and to address several interpretive issues relating to application of the rules of origin. My colleague John Simpson already has addressed these issues in some detail.

We are working with architectural, engineering, accounting and other professional organizations, encouraging their efforts to provide for mutual recognition of standards for licensing and accreditation of professionals.

We provide economic analyses of requests for the speedier elimination of tariffs than that provided under the original terms of the FTA, where this is appropriate, as part of the annual tariff acceleration process. We analyze the likely economic consequences of accelerated removal of tariffs on U.S. industry and the potential opportunities to be presented to U.S. business in the Canadian market. Under the Free Trade Agreement, all remaining tariffs will be eliminated over five or ten years. However, the FTA provides for accelerated removal of tariffs if both countries agree.

The first year of tariff acceleration talks produced a far-reaching agreement covering more than 400 products and $3 billion of U.S. exports. Important export items on which tariff elimination was accelerated effective April 1, 1990, include chemicals, pharmaceutical products, photographic film, telecommunications equipment, electric motors and generators, diesel engines, printed circuit card components, and scientific instruments.

We are safeguarding the rights of U.S. bidders for Canadian government procurement contracts with respect to bid solicitation, transparency, and bid challenge procedures. This is an issue of substantial interest to small business. The FTA provides new non-discriminatory access to an additional $500 million worth of Canadian Government tenders valued over $25,000 each.

Most importantly, "Buy American" and "Buy Canadian" restrictions have been eliminated on the procurement of goods by U.S. and Canadian entities covered by the GATT Government Procurement Code between the Code threshold of $171,000 and the FTA threshold of $25,000.

Before the FTA, a majority of Canadian purchases were below the GATT Code threshold and inaccessible to U.S. exporters. This is no longer the case. While 43 U.S. firms were awarded contracts under the GATT/FTA Code during the last three quarters of 1989, in just the first five months of this year, 61 U.S. companies have been awarded contracts ranging in value from $9,000 to $1 million.

Multilateral negotiations are currently underway to expand the coverage of the GATT Procurement Code. These negotiations are intended to expand the Code's list of federal entities and to bring under the umbrella of the Code, procurement of services and sub-federal entities. Once the GATT Code negotiations are concluded, we will return to the table with Canada to improve and expand our FTA government procurement coverage.

The FTA provides a consultative mechanism (Trade Commission) where disputes are addressed and many can be resolved. Failing that, the FTA has a strong and expeditious dispute settlement mechanism. Commerce Department analysts work with USTR to resolve these issues, and provide their expertise when use of the dispute settlement mechanism is necessary.

As in any trading partnership, disputes are unavoidable and dispute settlement procedures have been invoked by Canada or the United States in a number of instances including: Canadian wine and spirit barriers; Canadian landing requirements on Pacific Coast salmon and herring; Canadian lack of compensation for cable retransmissions; and U.S. conservation measures affecting lobsters.

It is interesting to note that many of the disputes listed above actually predate the FTA. However, as in the recently resolved salmon and herring case, having the Agreement in place with its stronger dispute settlement mechanism, makes disputes more amenable to solution and we hope over time will deter new trade disputes.

Pursuant to the FTA Implementation Act of 1988, the President directed the Commerce Department to set-up and to provide for the U.S. Section of the FTA Binational Secretariat. We have provided funding, office space, equipment and personnel for the Secretariat, and its operations began exactly on schedule.

To date, twelve cases have been been filed with the Secretariat and four decisions have been rendered by panels.

Binational Panel Review of antidumping and countervailing duty final determinations is a unique feature of the FTA. It replaces judicial review of final determinations of Canada or the United States with review by panels of U.S. and Canadian experts. These panels apply the same standard of review as would be applied by domestic courts, to decide whether these final determinations are consistent with the law of the country that made the determination. It permits quick resolution of these issues without unnecessary bilateral trade friction.

The Secretariat has met all legal, regulatory, procedural, budgetary and administrative requirements imposed upon it, and has effectively administered panel review of the cases referred to it. We are pleased with the system. We are confident that the FTA Chapter 19 panel process provides an efficient, transparent and fair mechanism to adjudicate AD/CVD final determinations referred for panel review in lieu of court review.

But it is not only the Office of Canada which is involved in implementing the FTA. The United States and Foreign Commercial Service has 47 District Offices at 68 locations around the United States, and 8 Officers and 12 Nationals in Canada at various locations all helping U.S. businesses export to Canada and take advantage of the FTA. The District Offices are also Commerce's first contact point for companies interested in exporting anywhere in the world.

US&FCS District Offices

US&FCS District Offices have counseled U.S. exporters of all sizes on various aspects of selling to Canada and many of the Offices have sponsored numerous conferences on the U.S.-Canada Free Trade Agreement. For example, the Buffalo District Office has cosponsored, promoted, and participated in ten events emphasizing the FTA since November 1988, and has two more major events planned. One conference will be held in Rochester and will focus on Quebec. The second is scheduled for October and will be a two-day exhibition and convention. Over 400 exhibitors are participating and 3,000-5,000 attendees are expected.

For another example, in October 1989 the Hartford District Office sponsored a conference specifically on the documentation requirements under the Agreement. Over 120 companies participated in the event, which included Canadian Customs officials.

The District Offices will continue to counsel current and potential exporters on selling to Canada, and additional seminars are planned.

Successful implementation of the FTA is the major goal of our Foreign Commercial Service officers in Canada. US&FCS Canada is supporting this goal with a variety of activities:

Government Procurement Tenders. One of the most immediate benefits from the FTA has been the increased access to and transparency of the Canadian Government procurement market referred to earlier. To alert U.S. firms to the government procurement opportunities under the FTA/GATT Procurement Code, FCS is reporting on average 65 GOC tender notices per month, which are publicized through various Department of Commerce mechanisms in the United States. As a result, many U.S. firms which have never attempted to sell to the GOC are now bidding on and winning contracts ranging in value from $9,000 to $1 million.

Alert Reports. To advise the U.S. business community of special opportunities in the Canadian market, US&FCS posts throughout Canada have been submitting a series of "Alert Reports" on various product sectors such as medical equipment, apparel, hotel and restaurant equipment, with specific information on new or changing markets for U.S. products and services.

Trade Promotion Events . US&FCS Canada has greatly expanded its program of trade and investment promotion events for FY90 and FY91 to take advantage of the FTA. For FY91 we have currently scheduled 17 promotional events across Canada, including trade missions, USA Pavilions in major national and regional trade shows, Invest in USA seminars, and catalog exhibits. The majority of the firms which participate in these trade events are new to the Canadian market or new to exporting. As part of our strategy we are expanding beyond the traditional commercial centers of Toronto and Montreal to include less traveled regional markets such as Halifax and stepping up activity in Calgary and Vancouver. While these regional markets may be relatively small in population base, they import as much from the U.S. as many European markets.

Cooperation with State Trade and Investment Agencies. To extend the range and effectiveness of our promotion activities in Canada, the US&FCS has been actively working with U.S. state trade and investment offices, encouraging them to increase their promotional activities and in many cases open offices in Canada. In January 1990 there was one state with representation in Canada; there are now nine states and the U.S. Virgin Islands with representatives in Canada, and several more are contemplating opening offices. US& FCS Canada has helped state operations get established, jointly plans trade and investment promotion events, and shares organizational responsibility for events with the state agencies.

Mr. Chairman, we hope through these and other activities, to reach the broadest possible number of U.S. firms with export potential to Canada; we place our emphasis here on small businesses.

I encourage you to continue to your efforts to help us get the word out about our programs and services for small businesses, especially about our new Border Seminars, in your newsletters, speeches, and contacts with businesses throughout the United States.

That concludes my formal testimony, Mr. Chairman. If there are any questions that you or the Committee members may have about these of other FTA issues, I will be happy to answer them.

TESTIMONY

of

the

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

by

SAUL SHERMAN, ESQ..

CHAIRMAN, AAEI SUBCOMMITTEE ON U.S.-CANADA TRADE

before the

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS

on

THE U.S.-CANADA FREE TRADE AGREEMENT

June 15, 1990

American Association of
Exporters *and*
Importers *11 West 42nd Street, New York, N.Y. 10036 (212) 944-2230*

Good Afternoon, Chairman LaFalce, members of the Committee. I am Saul Sherman, Chairman of the U.S.-Canada Trade Subcommittee of the American Association of Exporters and Importers (AAEI). AAEI is a national organization of over 1100 U.S. firms who are active in importing and exporting a broad range of products including chemicals, machinery, electronics, textiles and apparel, footwear and foodstuffs. AAEI members also include customs brokers, freight forwarders, banks, attorneys and insurance carriers. Many of our members trade with Canada on a daily basis.

AAEI thanks the Committee for the opportunity to relate our concerns about the current implementation of the U.S.-Canada Free Trade Agreement. AAEI has been a strong supporter ofthe Free Trade Agreement with Canada from the first. We helped to sponsor and promote the idea before and during the time it was being negotiated. We are concerned now to ensure that it works smoothly and that the benefits are not dissipated through friction--losses in the working of the machinery of implemenation. AAEI recognizes the importance of this issue for U.S. exporters and importers and the economies of both countries. The Association applauds this initiative by the Committee to address the practical problems posed to the U.S. business community by the machinery for implementing the U.S.-Canada Free Trade Agreement.

While the following problems deserve immediate attention, AAEI's testimony should not be construed as a condemnation of the working of the Free Trade Agreement (FTA) as a whole. In general, U.S. Customs is doing well overall on problems that have been encountered relating to the implemention and enforcement of the FTA. But, it can be said that if the problems which remain are not solved, the benefits of the Free Trade Agreement will be diminished, contrary to everyone's best interests.

AAEI's testimony is divided into three parts, which can be characterized as "The Form, The Substance and The Enforcement".

EXPORTERS CERTIFICATE OF ORIGIN

Without a doubt, this is the major impediment to trade contained in the FTA. AAEI understands both from its members and other U.S. businesses that the information required on the form is so complicated that many companies are not claiming the benefits of duty reduction under the FTA. AAEI has heard from smaller and larger firms alike that in terms of time (and cost) and aggravation, it does not pay for the U.S. business to fill out the form in order to claim, for example, a reduction in duty from 5% _ad valorem_ to 4% _ad valorem_. Those U.S. companies whose products' tariff rates have been reduced more substantially are tolerating the form and its requirements but are not happy about it and are paying too high a price for the benefits of the FTA. The following are specific complaints from small and large businesses about the Certificate of Origin, a copy of which is attached as Annex A:

Block (or Field) 3 - Whether or not an article qualifies under the FTA is in no way affected by who is the importer of record, the purchaser or the consignee in the U.S. or Canada. The question is origin, and these are facts regarding destination. As far as AAEI knows the Administration has not put forward a reason as to why the Block is necessary. This Block should be deleted from the form because is serves no purpose. Further as shown in Exhibit B (3/26/90 letter, paragraph 3) the Canadian Exporters Association agrees with our members' view on this issue.

Block (or Field) 4 - This Block requires "Producer's name, address, country and tax identification number (if different from exporter)" and is causing problems in two situations. First, many companies ship thousands of components and other support material on a daily basis. The sheer magnitude of the information required is preventing those companies from claiming the FTA benefits, even where all the information is known and disclosable. Second, in many cases the information is proprietary. The party shipping the goods and signing the form may not want the importer to know who is the original manufacturer or producer of the goods (the source of supply). AAEI suggests that to deal with either or both of these problems, Customs and Revenue Canada should accept the relevant information by means of a one-time permanent filing (subject to being kept current in the event of changes), to be made in confidence by the exporter with Customs or Revenue Canada. This could be in the form of a relatively simple catalogue, listing the merchandise, including where appropriate part or model numbers, etc., and the producer identification. The filing could be made on a computer disc or tape and placed in a government memory bank. The exporter could use a reference number on the Certificate of Origin form, so as to direct the officials to the relevant information, thus avoiding both repetition and disclosure to the importer.

FTA RULES OF ORIGIN

While the Rules of Origin under the FTA reflect much effort, often difficult negotiations, and the best of intentions, AAEI firmly believes that Annex 301.2 to the FTA is a problem waiting to happen. We believe that the experience to date does not reflect many of the underlying problems because importers encountering these problems elect to waive their rights rather than try to find their way through the maze. A search for an international standard rule of origin is currently under way in the GATT Uruguay Round, and any such rule that results should be made applicable to the FTA in place of the present rules.

Meanwhile, so long as the "substantial transformation" test plays a part in the origin determination, AAEI would like to support a modification suggested by a member. Under this proposal, products of certain manufacturing operations would be made FTA-eligible without requiring documentation regarding content. This procedure would be applied to "continuum transformation manufacturing" operations, in which individual piece parts are assembled into increasingly complex items, which at any level of manufacturing would be deemed to have undergone a substantial transformation sufficient to make them eligible. This proposal would be in keeping with the provisions of Article 301.2: General Rules of the FTA, which state:

> In addition, goods originate in the territory of the Party if they have been transformed in the territory of either Party or both Parties...

This proposal would be particularly helpful where production facilities on both sides of the border are owned by the same company, especially if the production process is divided differently at different times. But, AAEI believes that it would also help smaller firms, especially suppliers of parts and components to the larger firms.

ENFORCEMENT

First, AAEI wishes to express its appreciation to U.S. Customs for extending the validation period of a blanket certificate of origin from six months to twelve months. The change, which was effective June 1, 1990 eliminates paperwork and saves money for both U.S. business and U.S. Customs.

Overall, U.S. Customs is doing a commendable job of enforcing the FTA and encouraging compliance. Customs and the U.S. Department of Commerce made an excellent effort prior to the FTA's implementation to educate the trade community about and provide written information on the FTA. Since the FTA's implementation, U.S. Customs has been very flexible in its enforcement of the FTA's requirements. AAEI suggests that this flexibility should continue indefinitely in order to avoid problems. For instance, one of our members reports that an importer's articles were denied FTA status simply because the place of the signing was not indicated in Block 11 by the party filling out the certificate of origin. AAEI understands the need to abide by the laws but encourages flexibility so that the spirit and intent of the FTA is fulfilled.

Another concern of AAEI's membership is uniform interpretation and enforcement of the FTA throughout Customs. While the instances of non-uniformity have not been many, AAEI believes there should be a central, well advertised contact within Customs to answer the trading community questions. This contact could be located in Headquarters or in a district along the Northern border. Until budget pressures forced them out of business, U.S. Customs had a U.S.-Canada FTA hotline which answered general questions. Although there is a separate Canadian Free Trade branch within Customs, a resurrection of the hotline would be helpful, especially to small U.S. businesses. Perhaps it would be sufficient simply to advertise to the trade the Customs personnel who can answer policy and practical questions.

AAEI members that export to Canada also have concerns with Revenue Canada's enforcement policies. It appears that Canadian Customs' field personnel are receiving little guidance from Ottawa about the specific requirements of the FTA. A U.S. exporter relates that the requirements of proof of country of origin vary according to point of entry, and that the field is unsure of what constitutes acceptable proof. Further, the Canadian officials are not, in all cases, guaranteeing confidentiality of appropriate information, and they are unable to say how they will protect such confidentiality. AAEI suggests that the U.S. Customs and Revenue Canada join together to solve these problems.

In conclusion, AAEI would like to stress that overall the FTA is working well. However, the small problems detailed above should be addressed sooner rather than later to ensure that U.S. business can enjoy the full benefits of the FTA.

AAEI again thanks the Committee for the opportunity to comment and looks forward to working with the Committee to resolve these problems and others that may arise.

EXHIBIT A

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Approved through 4/30/90
OMB No. 1515-0164

U.S.-CANADA FREE TRADE AGREEMENT

EXPORTER'S CERTIFICATE OF ORIGIN

19 CFR 10.307(d)

1 GOODS CONSIGNED FROM (Exporter's business name, address, country, tax identification number)

2. IF BLANKET CERTIFICATION

EFFECTIVE DATE

EXPIRATION DATE

3 GOODS CONSIGNED TO (Consignee's name, address, country)

4 PRODUCER'S NAME, ADDRESS, COUNTRY, TAX IDENTIFICATION NUMBER (If different from exporter)

5 ORIGIN CRITERIA FOR GOODS COVERED BY THIS CERTIFICATE

A Wholly produced or obtained in Canada or the United States, or

B The goods have been transformed in the United States or Canada so as to be subject:

1) to a change in tariff classification as described in the Rules of Annex 301.2, or

2) to a change in tariff classification as described in the Rules of Annex 301.2 and the value of originating materials plus the direct cost of processing in Canada or the United States is not less than 50 percent or, as required by Section VI Rule 15 of Annex 301.2, 70 percent of the value of exported goods, or

3) to Rule 5, Section XII of Annex 301.2, or

C No change in tariff classification because goods and parts are provided for in the same tariff subheading or goods were imported in unassembled or disassembled form and were classified pursuant to General Rule of Interpretation 2(a) of the Harmonized System, and the value of originating materials plus the direct cost of assembly in Canada or the United States is not less than 50 percent of the value of exported goods.

6 SPECIAL DECLARATION FOR TEXTILE PRODUCTS SUBJECT TO TARIFF RATE QUOTA

A Apparel goods cut and sewn in Canada or the United States from fabric produced or obtained in a third country

B Non-wool fabric and non-wool made-up textile articles, woven or knitted in Canada from yarn produced or obtained in a third country

7 Origin Criterion (See Fields 5 or 6)	8 Description of Goods	Tariff Classification (To Six Digits)	9 Gross Weight or Other Quantity	10 Invoice Number(s) & Date(s)

11 CERTIFICATION OF ORIGIN

I certify that the information and statements herein are correct, that all the goods were produced in Canada or the United States, that they comply with the origin requirements specified for those goods in the United States-Canada Free Trade Agreement, and that further processing or assembly in a third country has not occurred subsequent to processing or assembly in Canada or the United States.

I agree to maintain, and present upon request, the documentation to support this certification and, if this is a blanket certification, to inform the importer or other appropriate party of any change that would affect the validity of this certification.

This certificate consists of ______ pages.

PLACE AND DATE	AUTHORIZED SIGNATURE	TITLE

Customs Form 353 (120188)

INFORMATION FOR THE
COMPLETION OF THE
EXPORTER'S CERTIFICATE OF ORIGIN

Paperwork Reduction Act Notice. The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We ask for the information to carry out the terms of Annex 406 of the U.S./Canadian Free Trade Agreement and the Statement of Administrative Action for the implementing legislation (P.L. 100-449). Annex 406 requires that, upon request, an importer must provide the Customs Administration of the Party (U.S./Canada) with proof of the exporter's written certification of the origin of the goods. The exporter's certification, provided for in the Agreement, is essential to substantiate compliance with the rules of origin under the Agreement. You are required to give us this information.

Statement Required by 5 CFR 1320.21. The estimated average burden associated with this collection of information is 20 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention Desk Officer for U.S. Customs Service.

FIELD

1. Complete with the full legal name, address, country and tax identification number.
2. Complete with the effective and expiration dates (Maximum 6 months),[1] if this certificate is to cover multiple FTA qualified shipments to the same importer. NOTE: It is the exporter's responsibility to notify everyone to whom a blanket certificate is issued if changes occur in materials, costs, or production sites that would materially affect the accuracy or validity of the certification during the period. Failure to do so could make the exporter subject to penalties.
3. Complete with the consignee's full legal name, address, and country.
4. Complete with the full legal name, address, country and if known, the tax identification number. This field is to be completed only if the exporter is not the producer of the goods. If more than one producer's goods are included in a single or blanket certificate, attach a numbered list of the additional producers. Indicate the appropriate producer's number in parenthesis after the origin criteria in Field 7.
5. Fields 5 and 6 reflect the various origin criteria by which exported goods may be eligible for FTA treatment, and are to be identified in Field 7 for each corresponding item listed in Field 8.

5.A. Indicate this criterion if the goods are wholly produced or obtained in Canada or U.S. as defined in Article 304 of the Agreement.

5.B.1. Requires that a change in the tariff classification take place along with any other requirements, other than value-added, as described in the Rules of Annex 301.2 of the Agreement.

5.B.2. Also requires that a change in tariff classification take place. Additionally, it requires that the value of domestic materials and direct cost of processing, as described in the Rules of Annex 301.2, be either 50 or 70 percent, as specified in the Rules of Annex 301.2, of the value of the exported good.[2]

5.B.3. This field does not require that a change in tariff classification take place but other requirements as described in the Rules of Annex 301.2, other than value-added, be met.[2]

5.C. This criterion does not require that a change in tariff classification take place but requires that the value of domestic materials and direct cost of assembly is not less than 50 percent of the value of exported goods. The provisions of this criterion are in accordance with paragraphs 3, 4, and 5 of the interpretation of Annex 301.2 of the Agreement. The imported components from which the goods were produced in Canada must have constituted an unassembled or disassembled article as per the General Rule of Interpretation 2(a) of the Harmonized System, or the tariff subheading for the imported components must have provided for both the goods and their parts.

6. The special declarations for textile products are identified for use in Field 7.
7. Indicate the origin criterion selected from Fields 5 or 6 for each corresponding item listed in Field 8. If more than one article for export is covered by this certificate, the origin criterion for each is required. If necessary, a continuation sheet may be used to list the articles for export and their respective criteria. If more than one producer (Field 4) is identified, indicate next to the criteria the producer number assigned, e.g. 5.A.(3).
8. Fully describe the goods. If more than one article for export is covered by this certificate, a complete description of each article is required. If a change in tariff classification criterion is used and there are multiple constitutent materials, indicate in parentheses, the number of third country constituent materials per unit. When third country constituent materials vary in a product, estimates are acceptable. The tariff classification, to six digits, of each article for export is required beside each description.
9. Indicate the gross weight or other pertinent quantities, as described on the invoice(s) or purchase order, of each good listed in Field 8. If this is a blanket certificate, indicate the contracted for weight or other quantity anticipated or contracted for during the blanket certification period, if known.
10. Indicate the invoice number(s) and date(s) for each item being shipped. If this is a blanket certificate, this field need not be completed.
11. Self-explanatory. The number of pages the certificate comprises must be indicated. NOTE: Unless the place, date, signature and title of the exporter appear on the space provided, this document will be considered invalid.

Note: Where the certificate or instructions makes reference to "Canada or the United States" or "domestic", this is to be interpreted as meaning either Canada or the United States or both.

[1] Canada will accept blanket exporter certificates with a validity period of twelve months, the United States will accept a validity period of six months.

[2] Canada requires the exporter to indicate the specific rule which the goods qualify, the United States simply requires an indication of the criterion.

☆U.S. GPO 1988-0-227-429

EXHIBIT B

CANADIAN EXPORTERS' ASSOCIATION
ASSOCIATION DES EXPORTATEURS CANADIENS

[illegible]

March 26, 1990

Layne Noble
Director - Origin Determination
Revenue Canada Customs and Excise
Connaught Building
Mackenzie Ave.
Ottawa, Ontario
K1A 0L5

Layne
Dear ~~Mr. Noble~~,

I thought you would be interested in the attached minutes of a meeting we held on March 13th of our new U.S. Market Access Committee with External Affairs and International Trade Canada. Canadian Customs were ably represented at this meeting by Ms. Thornhill.

I would particularly draw your attention to the discussion on p.2 on certificates of Origin. We were pleased to learn that at your meeting in late February with your U.S. Customs counterparts there were some positive indications that they are going to look seriously at extending the life of blanket certificates of origin to twelve months.

However, we were disappointed to learn that at your meeting with U.S Customs there was no disposition to eliminate consignee name from the CF353. This requirement is confusing and we would be interested in knowing why it was thought necessary to retain it on the certificate when it has no relevancy to the origin of the goods.

We would also be interested in any other observations you may have on the subjects discussed on ways and means of simplifying origin requirements so that administration and costs are minimized on both sides of the border.

Your's sincerely,

Jim

L. James Taylor
President

cc. K. von Finckenstein
D.G. Waddell
A. McCaskill

CANADIAN IMPORTERS ASSOCIATION INC.

ASSOCIATION DES IMPORTATEURS CANADIENS INC.

SUITE 700 • 210 DUNDAS ST. W. • TORONTO, ONTARIO, M5G 2E8 CANADA • TEL: (416) 595-5333
CABLE ADDRESS: "IMPORTANT", TORONTO • FAX NO: (416) 595-8226

PREPARED STATEMENT OF ANDREW VANDERWAL

THE CANADIAN IMPORTERS ASSOCIATION

Written Testimony
Friday, June 15, 1990

**House of Representatives Committee
on Small Business Hearings
"Administrative Impediments to Trade Under the
United States - Canada Free Trade Agreement"**

The Canadian Importers Association is a national association serving to provide its members with representation and information on international trade issues. Since its establishment in 1932, the Association has grown to over 700 members and has established a number of industry-specific "sub-associations", including the Association of International Automobile Manufacturers of Canada (AIAMC), the International Cheese Council of Canada (ICCC), the Footwear Import Committee (FIC), the Canadian Meat Importers Committee (CMIC) and the Electronics Import Committee (EIC).

Essentially, the Association's membership services can be conceptualized as comprising of two basic categories:

1) Information services provided through weekly newsletters, conferences, seminars and individual consultations to enable importing member firms make informed business planning decisions; and
2) Representation and lobbying on behalf of the business interests of importing members.

The Association is funded by its members and is not a recipient of contributions from the Canadian government.

Membership of the Association include importers of products ranging from agricultural goods to manufactured consumer goods. A number of representatives of exporting countries, states and export industry organizations are also members to support the Association's efforts to reduce Canadian trade barriers as well as to have access to information provided by the Association. The export interests of the United States have been represented through the membership of the State of Delaware Development Office (Dover, Delaware). State of New York (Toronto, Ontario office), the Embassy of the United States of America, Ottawa, the Commonwealth of Pennsylvania (Harrisburg, Pennsylvania), and the Ohio Department of Development, International Trade (Columbus, Ohio).

The Association has represented and advised its membership throughout the negotiations leading to the FTA and its subsequent implementation and further development.

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ADMINISTRATIVE IMPEDIMENTS TO TRADE

Of administrative impediments to Canada/United States trade under the Free Trade Agreement (FTA), there are essentially those that result from the application of the FTA and those that result from the incomplete implementation and development of the FTA. Additionally, there are trade impediments that result from limitations in the current scope and coverage of the FTA. In this submission, emphasis will be on placed the administrative impediments to trade under the FTA, not the limitations of the FTA itself.

Canada and the United States chose to structure their trade agreement as a "free trade agreement" rather than the more comprehensive "customs union" model that has been followed by Europe. Canada and the United States are both maintaining their own tariff and non-tariff external barriers to third countries. As a result, the FTA must include rules of origin that prevent firms from using either Canada or the United States as a conduit for third country trade.

Only products that qualify under the rules of origin are deemed to be a sufficiently Canadian or American product to be entitled to preferential access to each other's market.

The FTA specifies in great detail the amount of transformation required for a product to meet the rules of origin. In all cases, the Harmonized Tariff (HS) classification of third country imported components must meet a specified classification change for the end product to meet the rules of origin. In many cases, finished product with components imported from third countries must also meet value added criteria (see attached list of FTA items with value added requirements).

The Certificate of Origin

For a product to qualify for FTA treatment, it must be accompanied by a "certificate of origin", which is a declaration form signed by the exporter.

The requirements of the certificate of origin has been identified as the greatest impediment to trade under the FTA. However, it would appear that significant improvements to the administration of certificate of origin procedures can only be accomplished through changes to the rules of origin of the FTA itself.

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To properly complete the certificate of origin, Canadian and American exporters must determine whether each product, component or part meets the rules of origin. This is a very time consuming and costly process, particularly for firms that ship tens of thousands of different small parts and other items.

Complications can also arise when importers and exporters use different HS classification numbers for the same product due to classification interpretation differences between Canada and the United States. Uncertainty over whether a certificate of origin is properly completed is increased by inconsistencies in the level of detail in describing goods required by Customs at different ports of entry.

In some cases, a product will be disqualified from FTA application due to a small value off-shore component that may account for less than 1% of the value of the final product.

While most recommendations for administrative improvements would involve a change to the FTA itself, Association members have identified minor areas in which they feel where improvements can be made in the administration of the current FTA, as identified below:

1) The certificate of origin for goods entering the United States requires only that the actual criteria be shown (ie. 5A, 5B1 etc.), while Canada Customs also requires identification of the actual rule of origin from the FTA (ie. XII-2). Standardization to the easier requirement would reduce the administrative burden for importers and their brokers.

2) Importers have suggested that the certificate would be easier to complete if the origin criteria could be identified once for groups of products that meet the same criteria. Currently, the origin criteria must be identified with each item.

These recommendations for administrative improvements are minor in comparison with problems relating ultimately to the FTA rules of origin rather than the certification of these rules.

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The magnitude of the problems encountered in applying the Canada/United States FTA rules of origin is a result of the high volume of trade covered by the Agreement. As Canada is (marginally) the largest trading partner of the United States, and the United States is by far the largest trading partner of Canada, the FTA covers a great deal of trade - more than any other bilateral agreement.

The FTA is an important milestone in the lengthy process of liberalizing trade between Canada and the United States. Nonetheless, trade has been progressively liberalized prior to the Agreement and will likely continue to further evolve through further negotiations in years ahead. An important area for future negotiations will entail a simplification or elimination of the FTA rules of origin criteria.

Public Information and Assistance

Canadian importers have advised that United States suppliers frequently do not have sufficient information to properly complete the certificate or origin. In some cases this is due to the complexity of determining whether a product meets the rules of origin. However, in many cases, this is due to a lack of information and knowledge of the complex requirements of the FTA.

Members have advised that United States suppliers frequently interpret the phrase "wholly of the United States origin" to mean anything that they have purchased in the United States regardless of its original origin. As a result, Canadian importers have encountered certificates of origin that declare a product to be wholly of United States origin when the product was clearly made off-shore.

Should Customs determine that a certificate is incorrectly completed, the importer will have to pay the extra duties. Uncertainty over whether United States exporters can substantiate their claim to FTA status for their products results in higher business costs.

In the interest of promoting exports from the United States and making these exports more competitive in Canada, a major education effort should be launched to advise exporters how to certify products meet the FTA rules of origin.

Part of the public information process could involve a study and evaluation of the difficulties experienced by the private sector in properly certifying that their exports meet the FTA

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rules of origin. The results of this research could be used during the future Canada - United States negotiations to streamline and improve the FTA.

Non-Tariff Barriers

In addition to phasing out all tariffs between Canada and the United States, the FTA also addresses non-tariff barriers to trade. Domestic standards and inspection procedures in Canada and the United States can often act as administrative non-tariff trade barriers. In light of this, the FTA specifies that Canadian and American government entities dealing with standards work together to develop common or compatible standards where possible. As progress is developing common standards has just begun, administrative barriers to trade persist. Many exporters have to engage in a costly process of tailoring their product to different standards and undergo expensive inspection procedures designed to ensure that standards are met.

Significant progress has already been achieved is in the area of traded meat as Canada and the United States are close to recognizing each other's standards and compliance procedures. This will lead to an "open border" for traded meat products enabling Canadian and American meat exporters to avoid the costly cross border meat inspection process. Meat will be able to move as freely between Canada and the United States as it currently moves between states or provinces.

This progress can be considered to be one of the successes of the FTA that should be supported and extended to other outstanding areas where differing standards pose an administrative barrier to trade.

Improvement of statistical information regarding Canada/United States trade will also help to facilitate bilateral trade. Inaccurate statistics have previously been used by industries to lobby for protection. The previous process of rationalizing Canadian and American trade statistics occurred too late to prevent trade-deterring actions based on inaccurate statistics.

Through a 1989 Memorandum of Understanding, Canada and the United States are relying on each other's import statistics to provide export statistics for each country. As import statistics for both Canada and the United States are more accurate than export statistics, reliance on each other's import statistics should greatly improve the quality and timeliness of statistical data.

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On the request of the United States, the Canadian government requires importers to declare on Customs documentation form B3 the total freight charges (to the nearest dollar) to transport the imported goods from the place of direct shipment in the United States to the consignee in Canada.

Canadian importers have advised that this statistical requirement is administratively onerous as the breakdown of information on freight costs from and weight is not available to importers and cannot be accurately identified.

Summary

The FTA rules of origin and their administration create substantial business costs that detract from the trade liberalization of the FTA. Most significant improvements in the administration of the FTA rules of origin would require changes to the FTA rules of origin.

An information program to provide exporters with details on proper completion of the certificate of origin would alleviate some of the administrative difficulties experienced by importers and exporters. However, due to the complex requirements of substantiating a claim that a product meets the rules of origin, significant business costs will continue to be associated with the FTA until rules of origin of the FTA are streamlined or eliminated through a bilateral negotiation process.

Further progress needs to be made in reducing the administrative trade barriers of unnecessary differentiation of product standards and duplication of product inspections. Minor improvements can be made in the bilateral exchange of statistical data.

FTA ITEMS WITH VALUE-ADDED REQUIREMENTS

products of the Chemical or Allied Industries

plastics and articles thereof

rubber and articles thereof

textiles and textile articles (subject to a quantitative restriction rather than a value-added requirement)

footwear

umbrellas and sun umbrellas

refined copper

copper waste and scrap

master alloys of copper

copper powders and flakes

copper bars, rods and profiles

copper wire

copper foil

copper tubes and pipes

copper tube or pipe fittings

stranded wire, cables, plaited bands, of copper, not electrically insulated

Copper cloth, grill and netting, expanded metal of copper

nails, tacks, drawing pins, staples of copper or of iron or steel with heads of copper

copper screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins and washers

copper springs

copper cooking or heating apparatus of a kind used for domestic purposes, non-electric (and parts thereof)

copper table, kitchen or other household articles (and parts thereof)

copper pot scourer and scouring or polishing pads, gloves and the like copper sanitary ware (and parts thereof)

Unwrought lead and unwrought zinc

lead and zinc bars, rods, profiles and wire

lead and zinc plates, sheets, strip and foil

lead powders and flakes

lead and zinc tubes, pipes and tube or pipe fittings

Unwrought zinc

Cadmium and articles thereof (including waste and scrap)

Spark-ignition reciprocating or rotary internal combustion piston engines

television receivers (including video monitors and video projectors)

parts for various electronic products

Insulated wire, cable and other insulated electric conductors

optical fibre cables

vehicles, aircraft and associated transport equipment

optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus, clocks and watches

musical instruments

arms and ammunition (including parts thereof)

miscellaneous manufactured articles

PRESIDENTS AWARD
for EXCELLENCE
in EXPORT SERVICE

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The Committee on Small Business

U.S. House of Representatives

Testimony by

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June 15, 1990

Administrative Impediments to Trade Under the United States/Canada Free Trade Agreement

On behalf of NCITD - The International Trade Facilitation Council I would like to thank the House Committee on Small Business for the opportunity to make a statement regarding trade under the U.S./Canada Free Trade Agreement.

NCITD - The International Trade Facilitation Council is a non-profit, industry-financed, membership organization dedicated to simplifying and improving international trade documentation and procedures, including information exchange by either paper or electronic methods. Its approximately 200 organizational members represent companies, organizations, government agencies, and individuals involved in international trade, including exporters, importers, air and ocean carriers, banks, insurance underwriters, forwarders, custom brokers, associations, port authorities, communications/computer software and service companies, and others who participate in international commerce.

Working through individuals and companies, members and non-members, United States and overseas governmental departments and agencies, and duly constituted national and international committees and organizations, NCITD serves as a coordinator and as a central source of information, reference, and solutions to problems on international trade information exchange and procedures.

This organization and its members are very supportive of the U.S./Canada Free Trade Agreement, view the program very positively, and want to continue working toward its success. However, in implementing the Agreement many of the members of NCITD have experienced difficulties in interpreting, implementing, and complying with the Agreement. We are concerned that these difficulties will have a negative impact on the economic benefits of this Agreement and that new non-tariff barriers are being created that make doing business with Canada more difficult than prior to the Agreement.

Early this year an Ad Hoc Subcommittee of NCITD was established to review reported problem areas arising out of the rules and regulations of the Agreement and to propose corrective actions. The Subcommittee, through meetings and communications with members, developed a listing of the problems experienced. These problems and concerns were communicated to government representatives, and a meeting was held on March 20, 1990, chaired by Deputy Assistant Secretary of the Treasury John P. Simpson, with representatives of the U.S. Treasury Department, U.S. Trade Representative, U.S. Customs, and the U.S. Department of Commerce.

The issues identified by NCITD were:

1. Rules of Origin

a. The effort to acquire information and document country of origin under the current rules is a growing administrative burden for companies. This is especially true for products consisting of large numbers of components of both U.S. and foreign origin. The current rules of the Free Trade Agreement require detailed information on all components or materials as to the harmonized tariff classification and country of origin. The administrative effort to acquire this information and maintain it should be simplified.

b. The requirements for U.S. Origin certification are unclear regarding suppliers and levels in the supply chain, intermediate materials, and use of domestic and foreign suppliers for the same raw material or component. Domestic suppliers are unfamiliar with harmonized codes and certificates of origin and in many situations have difficulties in providing product information in the detail necessary to satisfy origin requirements.

c. Identifying each ingredient or component causes a problem where there is confidential information related to the product.

d. The procedure to determine origin is difficult when using both domestic and foreign suppliers for the same raw materials.

e. Revenue Canada has introduced a territorial questionnaire (5 pages of instructions and 7 pages of forms) which represent a growing administrative burden to complete and which frequently requires extraneous information to satisfy a relatively simple verification of territorial content.

f. One of the specific areas where U.S. exporters have encountered problems has been with the documentation of origin by vendors and suppliers. At the March 20 meeting, NCITD was told that exporters can obtain a statement from each supplier indicating that components or materials meet the Rules of Origin. This statement would not have to be a formal certificate of origin but could be a letter of assurance. The supplier would not be required to indicate which rule applies or to provide confidential information. The affirmation of origin would only be required from the exporting manufacturer's first line of suppliers. The statement is valid indefinitely as long as the supplier does not make any changes that would alter its validity.

2. Harmonized System Rulings

Harmonized System applications in both countries have not been uniform (e.g., chemicals and plastics). Problems have developed with completion of certificates of origin concerning the correct Harmonized System numbers to use and the need to include numbers on documents.

Current interpretation is that the Free Trade Agreement cannot be used when the Harmonized System number used by the importer is not the same as used by the exporter. The requirement to used Harmonized System numbers in the Customs clearance function and in origin certificates causes severe problems in those cases where different Harmonized System numbers are applied. It has been reported that Customs Services of both nations have stated that such conflicts rarely occur. This statement is at variance with our members' experiences. Customs authorities advise that Harmonized System conflicts should be resolved through the Free Trade Agreement Commission, but we believe this solution to be bureaucratic and slow.

3. Foreign Content

A "De Minimus Rule" that would allow a product to qualify "as wholly a product of the USA" , even though it contains a small percentage of non-qualifying material, would help reduce the origin documentation burden.

Creation of a minimum foreign content rule could allow up to 2% foreign or otherwise trace components in a product which is otherwise eligible for certification as "wholly a product of the USA". Under the current all-inclusive interpretation, every element or component must be analyzed however minute. One exporter has problems documenting the origin of paper pads which are otherwise eligible for "100% U.S. origin" treatment because they are unable to determine the origin of the dye used to color the USA-produced paper.

4. Blanket Certificates of Origin

The NCITD Ad Hoc Subcommittee has recommended that the U.S. should change the duration of its Certificate to one year to agree with Canada's. We have recently been notified that this has been implemented by U.S. Customs effective June 1.

5. Case Study

One exporter found that Revenue Canada's requirements to qualify vendor-purchased components under the Agreement are very demanding, requiring extensive communications and efforts for three products that had total annual duty revenue impact of $117.20 in Canada in 1989. This exporter determined that because of the amount of detail requested to substantiate his claim, involved business units were beginning to question the cost/benefit relationship of certifying items of eligibility. An additional concern was the divulging of proprietary details for components and their unit costs.

One example was a filter element that had 1989 duty into Canada of $3.20. This product was included in a Canadian Territorial Content Questionnaire that was requested. Upon submission, Revenue Canada stated that "further verification of origin of the filter element is required. Such verification should include confirmation of origin by the supplier, and a description of the component materials and processing". In order to completely categorize this product, the exporter spent considerable administrative time trying to document the answers to the questions.

A second product was a lens cleaner with total 1989 duty of $61.60 which was also included in the Territorial Content Questionnaire. Verification of origin of the lens cleaner material was required to "include confirmation by the supplier of the material, and a description of component materials and processing description".

A third example was gray screen paper with annual duty of $52.39. The exporter was able to show 78% USA content, but that was not enough. Revenue Canada requested additional information concerning this product and a revised filing with additional information was made.

(Further details of the above examples are provided in Attachment A to this report.)

These examples illustrate three fundamental problems:

1. The selection of items for detailed investigations. These seems to be no consideration of duty impact on Canada and insignificant items are being selected for extensive additional information.

2. The detailed questionnaires required by Revenue Canada need too much information to satisfy a relatively simple verification of territorial content. The disclosure of component materials, unit cost, worldwide sales, etc., is not relevant to the territorial determination.

3. The precision and persistence of Revenue Canada to justify purchased components as originating in the territory is too demanding and requires excessive efforts and costs which override the benefit of the Free Trade Agreement.

NCITD is of the opinion that there are fundamental problems with the origin classification process. There is concern regarding the inclusion of the Harmonized System number on the certificate of origin. In practice, the numbers on the U.S. exporter's certificate of origin are frequently different than the importer's tariff classification. A better procedure would be for Customs authorities to accept the importer's Harmonized Code tariff classification, which should also be used on the exporter's Certificate of Origin.

The above-mentioned March 20th meeting was most constructive and indicated a willingness by government representatives to further research areas of contention for possible changes to United States government implementation rules or representation to Canada to consider modification to Canadian rules. Further, NCITD will keep U.S. government representatives informed of problem areas as they occur and another meeting of government and industry representatives will be scheduled in about six months.

It is understood that a meeting between U.S. Customs and Revenue Canada was held on May 31, 1990, but the results are not known as of this date.

In closing, it should be reiterated that NCITD and its membership support the U.S./Canada Free Trade Agreement and would like to continue working with all parties involved in making the required procedures significant, simplified, and effective.

PREPARED STATEMENT OF MICHAEL HACHEE

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June 15, 1990

The Honorable John J. LaFalce, Chairman
Committee on Small Business
House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515-6315

Dear Congressman LaFalce:

Thank you for inviting our Association to participate in this hearing on the "Administrative Impediments To Trade Under The United States-Canada Free Trade Agreement". Our Association is comprised of 39 independent firms providing customs brokerage service on the border with Canada. Our members prepare the U.S. Customs entries for more than 95% of the goods imported into the United States from Canada. Therefore, the United States-Canada Free Trade Agreement (FTA) has had a significant impact on our members. Not a day goes by without our members receiving numerous inquiries from businesses in the U.S. and Canada in need of some information relative to the FTA's provisions and procedures.

All things considered, our Association believes that implementation of the FTA has occurred as smoothly as might be expected and that the Customs Services of both countries performed remarkably under less than ideal circumstances. That is not to say there are no rough spots or that improvements cannot be made. Burdensome documentation requirements is an area where improvements are needed and is the focus of our attention this morning.

Background

Importers and exporters wishing to take advantage of the provisions of the FTA cannot do so without an Exporter's Certificate of Origin (ECO). The ECO is a document whereby the exporter certifies that goods meet the rules of origin established by the FTA. The importer (or his agent) must be in possession of the ECO prior to filing a Customs entry claiming the FTA reduced duty rate. The ECO is not required to be submitted to Customs. An exporter may prepare an ECO to cover an individual shipment to the other country or, alternatively, a blanket certificate good for a term of up to one year. Attached for the Committee's convenience is a copy of the ECO form published by the United States Customs Service. Instructions for completing the form are found on the reverse side. Canada Customs prescribes a similar but bilingual form. The instructions are somewhat different. In general, United States exporters complete the Canadian form and Canadian exporters execute the United States form. In either case Field No. 3 is a significant problem.

Field 3

Currently, the complete name and address of the buyer or importer of record must be shown in Field 3 of the ECO. This requirement is the source of most of the complaints we hear relative to burdensome documentation. An exporter with numerous customers in the other country that wishes to execute a one year blanket certificate faces a formidable task. Such an exporter must either execute a separate blanket certificate for each customer or execute one blanket certificate and attach to it a listing of all its customers. Exporters are understandably reluctant to produce and distribute to all their customers a certificate containing such customer lists. Even when they do so, such lists, and the blanket certificate they are part of, soon become outdated as new customers are obtained or listed customers change names and/or addresses.

Our Association believes that the requirement for this information should be eliminated. In most cases the goods covered by an ECO meet the FTA rules of origin regardless of the identity of the buyer in the other country. An exporter should be allowed to issue a blanket certificate which is truly a "blanket certificate." Exporters should be allowed to leave Field 3 blank unless it is their intention to restrict the applicability of the certificate to one or more buyers. In the latter case, the buyer(s) would then be identified in Field 3.

Alternatively, exporters should be able to issue blanket certificates showing "All Buyers" or words to that effect in Field 3.

Field 4

Field 4 is also a problem, although to a lesser extent than Field 3. Field 4 requires an exporter who is not the producer of the goods being certified to identify by name and address the actual producer. Remembering that the exporter must supply the certificate to the importer in the other country, it is easy to understand why there can be a problem. Exporters who do not produce the goods are being forced to inform their customer where they (the customer) might obtain such goods in the future (likely at lower costs.)

Canada Customs has recognized this problem and allows United States exporters faced with this predicament to insert in Field 4 a statement that the information will be supplied to Canada Customs upon their request. In this manner, a solution satisfactory to the concerns of both Canada Customs and U.S. exporters was reached. However, as of this date, the United States Customs Service has not agreed to allow Canadian exporters to do the same.

Our Association believes that Canadian exporters should be allowed to complete Field 4 in the same manner as their United States counterparts.

Field 8

A third aspect of the ECO which could be improved is to eliminate the requirement that the exporter show the six digit Harmonized System classification number in Field 8 for each product listed on the certificate.

The purpose of the ECO is to certify that goods qualify for FTA benefits. An exporter may have had to consider the Harmonized System classification in arriving at the conclusion that the goods do qualify but, having reached that conclusion, showing the classification number on the ECO is superfluous.

Conclusions

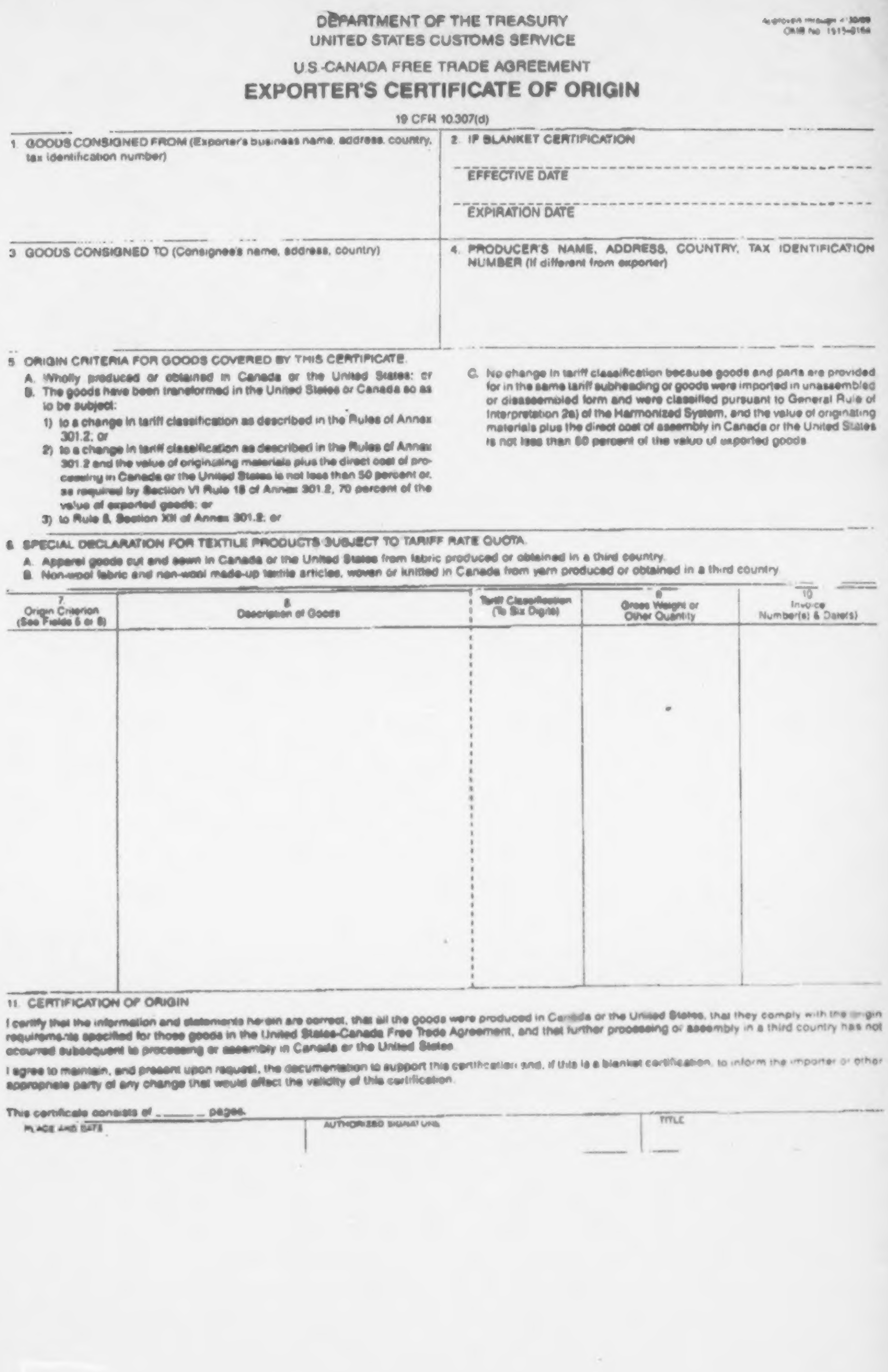
In conclusion, Mr. Chairman, it is our opinion that changes can and should be made that will lighten the documentation burden. We believe that the three areas we have highlighted represent the areas where the most benefit can be obtained.

Again Mr. Chairman, we sincerely appreciate the opportunity to appear and present information we hope will assist the Committee.

Thank you.

Respectfully,

Customs Brokers Association
Northern U.S. Border.



Approved through 4/30/89
OMB No. 1515-0164

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

U.S.-CANADA FREE TRADE AGREEMENT

EXPORTER'S CERTIFICATE OF ORIGIN

19 CFR 10.307(d)

1. GOODS CONSIGNED FROM (Exporter's business name, address, country, tax identification number)	2. IF BLANKET CERTIFICATION EFFECTIVE DATE EXPIRATION DATE
3. GOODS CONSIGNED TO (Consignee's name, address, country)	4. PRODUCER'S NAME, ADDRESS, COUNTRY, TAX IDENTIFICATION NUMBER (If different from exporter)

5. ORIGIN CRITERIA FOR GOODS COVERED BY THIS CERTIFICATE.

A. Wholly produced or obtained in Canada or the United States; or

B. The goods have been transformed in the United States or Canada so as to be subject:

1) to a change in tariff classification as described in the Rules of Annex 301.2; or

2) to a change in tariff classification as described in the Rules of Annex 301.2 and the value of originating materials plus the direct cost of processing in Canada or the United States is not less than 50 percent or, as required by Section VI Rule 18 of Annex 301.2, 70 percent of the value of exported goods; or

3) to Rule 8, Section XII of Annex 301.2; or

C. No change in tariff classification because goods and parts are provided for in the same tariff subheading or goods were imported in unassembled or disassembled form and were classified pursuant to General Rule of Interpretation 2a) of the Harmonized System, and the value of originating materials plus the direct cost of assembly in Canada or the United States is not less than 50 percent of the value of exported goods.

6. SPECIAL DECLARATION FOR TEXTILE PRODUCTS SUBJECT TO TARIFF RATE QUOTA.

A. Apparel goods cut and sewn in Canada or the United States from fabric produced or obtained in a third country.

B. Non-wool fabric and non-wool made-up textile articles, woven or knitted in Canada from yarn produced or obtained in a third country.

7 Origin Criterion (See Fields 5 or 6)	8 Description of Goods	Tariff Classification (To Six Digits)	9 Gross Weight or Other Quantity	10 Invoice Number(s) & Date(s)

11. CERTIFICATION OF ORIGIN

I certify that the information and statements herein are correct, that all the goods were produced in Canada or the United States, that they comply with the origin requirements specified for those goods in the United States-Canada Free Trade Agreement, and that further processing or assembly in a third country has not occurred subsequent to processing or assembly in Canada or the United States.

I agree to maintain, and present upon request, the documentation to support this certification and, if this is a blanket certification, to inform the importer or other appropriate party of any change that would affect the validity of this certification.

This certificate consists of ______ pages.

PLACE AND DATE	AUTHORIZED SIGNATURE	TITLE

INFORMATION FOR THE COMPLETION OF THE EXPORTER'S CERTIFICATE OF ORIGIN

Paperwork Reduction Act Notice: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it and whether you have to give it to us. We ask for the information to carry out the terms of Annex 406 of the U.S./Canadian Free Trade Agreement and the Statement of Administrative Action for the implementing legislation (P.L. 100–449). Annex 406 requires that, upon request, an importer must provide the Customs Administration of the Party (U.S./Canada) with proof of the exporter's written certification of the origin of the goods. The exporter's certification, provided for in the Agreement, is essential to substantiate compliance with the rules of origin under the Agreement. You are required to give us this information.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 20 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention Desk Officer for U.S. Customs Service.

FIELD

1. Complete with the full legal name, address, country and tax identification number.
2. Complete with the effective and expiration dates (Maximum 6 months),[1] if this certificate is to cover multiple FTA qualified shipments to the same importer. NOTE: It is the exporter's responsibility to notify everyone to whom a blanket certificate is issued if changes occur in materials, costs, or production sites that would materially affect the accuracy or validity of the certification during the period. Failure to do so could make the exporter subject to penalties.
3. Complete with the consignee's full legal name, address, and country.
4. Complete with the full legal name, address, country and if known, the tax identification number. This field is to be completed only if the exporter is not the producer of the goods. If more than one producer's goods are included in a single or blanket certificate, attach a numbered list of the additional producers. Indicate the appropriate producer's number in parenthesis after the origin criteria in Field 7.
5. Fields 5 and 6 reflect the various origin criteria by which exported goods may be eligible for FTA treatment, and are to be identified in Field 7 for each corresponding item listed in Field 8.

5.A. Indicate this criterion if the goods are wholly produced or obtained in Canada or U.S. as defined in Article 304 of the Agreement.

5.B.1. Requires that a change in the tariff classification take place along with any other requirements, other than value-added, as described in the Rules of Annex 301.2 of the Agreement.

5.B.2. Also requires that a change in tariff classification take place. Additionally, it requires that the value of domestic materials and direct cost of processing, as described in the Rules of Annex 301.2, be either 50 or 70 percent, as specified in the Rules of Annex 301.2, of the value of the exported good.[2]

5.B.3 This field does not require that a change in tariff classification take place but other requirements as described in the Rules of Annex 301.2, other than value-added, be met.[2]

5.C. This criterion does not require that a change in tariff classification take place but requires that the value of domestic materials and direct cost of assembly is not less than 50 percent of the value of exported goods. The provisions of this criterion are in accordance with paragraphs 3, 4, and 5 of the interpretation of Annex 301.2 of the Agreement. The imported components from which the goods were produced in Canada must have constituted an unassembled or disassembled article as per the General Rule of Interpretation 2(a) of the Harmonized System, or the tariff subheading for the imported components must have provided for both the goods and their parts.

6. The special declarations for textile products are identified for use in Field 7.
7. Indicate the origin criterion selected from Fields 5 or 6 for each corresponding item listed in Field 8. If more than one article for export is covered by this certificate, the origin criterion for each is required. If necessary, a continuation sheet may be used to list the articles for export and their respective criteria. If more than one producer (Field 4) is identified, indicate next to the criteria the producer number assigned; e.g. 5.A.(3).
8. Fully describe the goods. If more than one article for export is covered by this certificate, a complete description of each article is required. If a change in tariff classification criterion is used and there are multiple constitutent materials, indicate in parentheses, the number of third country constituent materials per unit. When third country constituent materials vary in a product, estimates are acceptable. The tariff classification, to six digits, of each article for export is required beside each description.
9. Indicate the gross weight or other pertinent quantities, as described on the invoice(s) or purchase order, of each good listed in Field 8. If this is a blanket certificate, indicate the contracted for weight or other quantity anticipated or contracted for during the blanket certification period, if known.
10. Indicate the invoice number(s) and date(s) for each item being shipped. If this is a blanket certificate, this field need not be completed.
11. Self-explanatory. The number of pages the certificate comprises must be indicated. NOTE: Unless the place, date, signature and title of the exporter appear on the space provided, this document will be considered invalid.

Note: Where the certificate or instructions makes reference to "Canada or the United States" or "domestic", this is to be interpreted as meaning either Canada or the United States or both.

[1] Canada will accept blanket exporter certificates with a validity period of twelve months; the United States will accept a validity period of six months.

[2] Canada requires the exporter to indicate the specific rule which the goods qualify; the United States simply requires an indication of the criterion.

*U.S. GPO 1988-0-237-438

Customs Form 353 (120188) (Back)